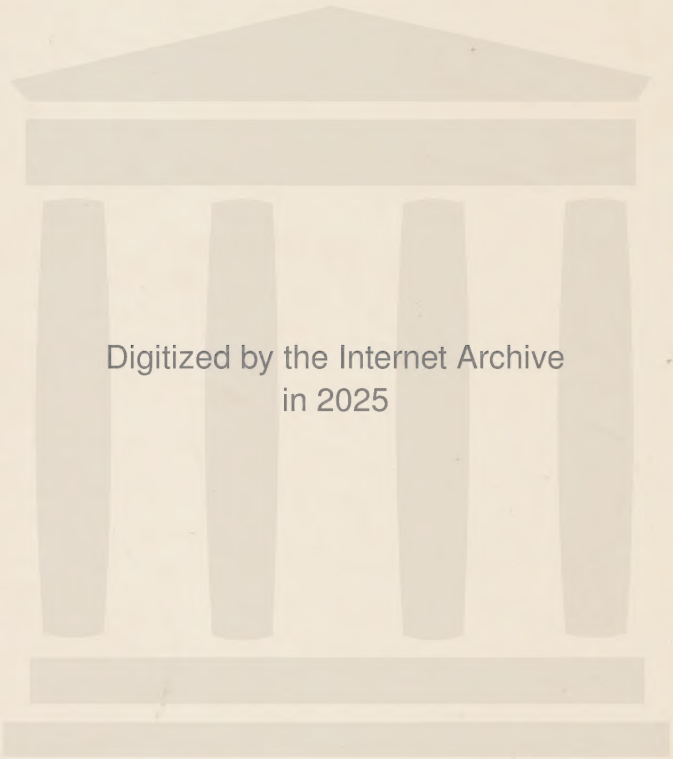

Digitized by the Internet Archive
in 2025

https://archive.org/details/practicelawofinc0000wmsa

a 11135

MIDDLE TEMPLE LIBRARY
WITHDRAWN STOCK

KM 337.11 SAN

16.

THE PRACTICE AND LAW

OF

INCOME TAX AND SUPER TAX

Price, 22/6 net. Postage 6d. extra.

DOWELL'S

INCOME TAX LAWS

SEVENTH EDITION

BY

J. E. PIPER

ASSISTANT SOLICITOR OF INLAND REVENUE

Revised, altered, and considerably enlarged, with complete Notes, Cross-References, Summaries of Statutory Provisions, Decisions and Sections on Crown Law and Procedure affecting the Revenue

---

BUTTERWORTH & CO., BELL YARD, TEMPLE BAR, W.C.

THE

PRACTICE

AND

LAW

OF

INCOME TAX

AND SUPER TAX

BY

WM. SANDERS

OF THE DEPARTMENT OF COMMISSIONERS OF TAXES, LICHFIELD; AND
LECTURER ON INCOME TAX TO THE BIRMINGHAM MUNICIPAL
SCHOOL OF COMMERCE

SECOND EDITION

LONDON:
BUTTERWORTH & CO., BELL YARD, TEMPLE BAR,
Law Publishers.

SYDNEY:	BUTTERWORTH & CO. (AUSTRALIA), LTD.
CALCUTTA:	BUTTERWORTH & CO. (INDIA), LTD.
WINNIPEG:	BUTTERWORTH & CO. (CANADA), LTD.
WELLINGTON (N.Z.):	BUTTERWORTH & CO. (AUSTRALIA), LTD.

AND

GEE & CO. (PUBLISHERS), LTD., 34, MOORGATE ST., E.C.

1916.

PRINTED BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

Feat
18/9/85
NLP

PREFACE TO SECOND EDITION.

MANY momentous alterations and introductions have been evolved since the publication of the First Edition. The House of Lords' decision in *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, has revolutionized the question of deductible expenses by defining, in effect, that profits for Income Tax purposes are, generally, synonymous with commercial profits, and thus characterizing the case as being the most important of the many Income Tax judicial decisions. The provisions introduced to meet the circumstances created by the existence of war by allowing in *inter alia* the re-enacted section 133 for reduced profits, and in the Excess Profits Duty for increased profits, are of particular financial moment, while the two Finance Acts of 1915 have produced several further points of minor importance. The latter Act has had a vital effect on the controversial question of deduction of tax from dividends. It is hoped that this second edition may prove of assistance in obtaining the many concessionary benefits of both the practice and the law.

WM. SANDERS.

BIRMINGHAM ROAD,
LICHFIELD,
9 *February*, 1916.

PREFACE TO FIRST EDITION.

It is hoped that this work may be of assistance in solving some of the many intricacies of the Income Tax. Much of the Income Tax law is grossly inequitable, and it is not contended that the practice is altogether removed from that undesirable element of injustice, but the practice is much more liberal than the law, and it remedies many of the glaring inconsistencies of the latter.

It is desired to emphasize the important point that concessions of practice and beneficent provisions of the law will not, in general, be extended to the taxpayer unless a demand is first made, and the result is that overpayment of Income Tax is of material prevalence. Moreover, the discretionary powers vested and admitted in the District Commissioners are particularly wide, and many of the controversial technical points of hardship need not be existent factors if the full extent of the Commissioners' powers is brought into operation.

The subject of Income Tax has, in recent years, become a specialized branch of Accountancy, and it is trusted that this work may prove of assistance to that profession.

Many persons interested in Income Tax, either financially or in a representative capacity, have not the facilities of a set of law reports, and the treatment in this Work of the many cases on which the interpretation of the Income Tax law depends, has kept in view, in some instances, the desirability of giving the outstanding principles, enunciated in

such cases, in the actual words of the judicial authorities, whose dicta are invaluable in prosecuting "appeals," and obviously carry more authority with the Commissioners than a revised version thereof. Smaller type is used for such dicta.

The most vital and most controversial characteristic of the Income Tax is that of deductible allowances, and, in order to facilitate reference thereto, the treatment of these deductions has, in Chapter III., been kept in alphabetical order.

The citation of reports of cases has been excluded from the body of the Work and given solely in footnotes, leaving only the year of decision in the main text.

WM. SANDERS.

BIRMINGHAM ROAD,
LICHFIELD,
16 *September*, 1914.

TABLE OF CONTENTS.

PAGE

Preface - - - - - - - - - - - - v.

Table of Statutes - - - - - - - - - - xiii.

Table of Cases - - - - - - - - - - - xx.

Introduction - - - - - - - - - - - xxxi.

List of Abbreviations of Reports - - - - - - - xxxv.

CHAPTER I.

ADMINISTRATION - - - - - - - - - - - 1—17

Commissioners - - - - - - - - - - 2— 9

Clerk to Commissioners - - - - - - - 9—12

Surveyors of Taxes - - - - - - - - - 12

Assessors and Collectors - - - - - - - 12—14

Methods of Assessment - - - - - - - 14—16

Principle of Administrative System - - - - 16

Parishes - - - - - - - - - - 16—17

CHAPTER II.

SCHEDULES A & B - - - - - - - - - - 18—44

Schedule A - - - - - - - - - - - 18

Rack Rent - - - - - - - - - 19

Poor Rate - - - - - - - - - 21

Appeal - - - - - - - - - - - 23

Valuation - - - - - - - - - 23—27

Repairs and other deductions - - - - - - 27—29

Sporting Rights - - - - - - - - 29—31

Deductions of Tax - - - - - - - 33—36

No. II. of Schedule A - - - - - 37—39

Schedule B - - - - - - - - - 39—44

Accounts - - - - - - - - - - 41—43

CHAPTER III.

	PAGE
SCHEDULE D	45—296
Profits not chargeable	45
,, chargeable	45
Case 1	46
Average System	47—55
Commencement	48
Discontinuance	53
No. III of Schedule A	55—60
Partnerships	60
Case 2	61—62
Case 3	63
Case 4	202
Case 5	203
Case 6	63
Succession and Reconstruction	65—79
Specific Cause	68—75
Deductible Expenses	79—87
Income Tax Profit	87—90
Extent of words "wholly and exclusively"	90—92
Deductible Expenses and Subjects of Assessment	92—296

CHAPTER IV.

PREPARATION OF RETURNS AND ACCOUNTS	297—322
Production of Accounts	297
Balance Sheets	297—303
Precept for Accounts	303
Preparation of Accounts	304
Claim for Exemption or Abatement	310—315
Official Instructions	315—322
Additional Assessments	322

CHAPTER V.

APPEALS	323—331
Procedure in Assessment	323
Schedules D and E	323
Limit of Appeal	324
Finality of Commissioners' Decision	325
Questions of Fact	325—327
Presence of Surveyors	327—328
Evidence	328
Professional Representation	329
Cases Stated	329—331

CHAPTER VI.

PAGE

RELIEF - - - - - - - - - - - - - 332—346
Abatements and Exemption - - - - - - - 332—337
Repayment - - - - - - - - - 333
Income Aggregable - - - - - - - - 334—335
Residents Abroad - - - - - - - - 336
Partnerships - - - - - - - - 334
Relief for Earned Incomes - - - - - - - 337—343
Unearned Rates - - - - - - - - 338
Definition of Earned Income - - - - - - 340
Life Insurance Premiums - - - - - - - 343—346
Children Allowances - - - - - - - - 346

CHAPTER VII.

SCHEDULE E - - - - - - - - - - 347—354
Basis of Assessment - - - - - - - - 348
Deductions - - - - - - - - - 349—350
Clergymen - - - - - - - - - 351—353
Easter Offerings and Gifts - - - - - - 351—353

CHAPTER VIII.

SCHEDULE C - - - - - - - - - - - 355—356
Scope of - - - - - - - - - - 355
Agents - - - - - - - - - - 356

CHAPTER IX.

ADJUSTMENTS - - - - - - - - - - 357—376
Setting off Losses under Sec. 101 - - - - - 357—359
,, ,, ,, ,, 1890 Act - - - - - 359—376
Comparison - - - - - - - - 364
Advantages - - - - - - - - - 365—369
Commissioners' Despotic Powers - - - - 368
Insurance and Financial Companies - - - - 369—371
Accounts - - - - - - - - - 371
Section 133 - - - - - - - - - 371—376

CHAPTER X.

PAYMENT AND RECOVERY - - - - - - - 377—391
Payment - - - - - - - - - - 377
Number or Letter Assessments - - - - 378
Unoccupied Premises - - - - - 378

PAGE

Recovery - - - - - - 378
Distress - - - - - - 378
Breaking-open Order - - - - - 379
Costs of Distress - - - - - 379
Deduction of Tax - - - - 380—390
Back Duty - - - - - - 391
Surcharges - - - - - - - - - 391

CHAPTER XI.

EXEMPTIONS - - - - - - - - - - 392—404
Charities, Schedule A - - - - - - 392—398
Private Act - - - - - - - - - 398
Crown Privilege - - - - - - - 399
Schedule C - - - - - - - - - 399
Schedule D - - - - - - - - - 400
Penalties - - - - - - - - 400—402
Repayment - - - - - - - - - 402—404
Schedules A, B, D, and E - - - - - - 402—404
Clergymen - - - - - - - - 403

CHAPTER XII.

SUPER TAX - - - - - - - - - - 404—412
Calculation of Total Income - - - - - 406—408
Sale of Business - - - - - - 408
Farming Losses - - - - - - - - 408
Regulations - - - - - - - - - 409—410
Example - - - - - - - - - 410—412
War Provisions - - - - - - 412

CHAPTER XIII.

EXCESS PROFITS DUTY - - - - - - - - 413—430
Concerns chargeable - - - - - - 413
Assessment - - - - - - - - 414
Basis of Profit - - - - - - 415—418
Basis of Assessment - - - - - - 418—425
Pre-War Standard - - - - - - - 422
Board of Referees - - - - - - - 425—426
Mineral Rights - - - - - - 426
Regulations - - - - - - - - 427—430

INDEX.

TABLE OF STATUTES.

		PAGE
46 Geo. 3, c. 65.	(Income Tax Act, 1806)	39, 55
5 & 6 Vict. c. 35.	(Income Tax Act, 1842)—	
	s. 4	3, 4
	s. 5	3, 4
	s. 6	3
	s. 7	3, 6
	s. 8	3
	s. 14	7
	s. 15	7
	s. 17	3
	s. 21	3, 4, 7, 8
	s. 39	199, 200, 204, 230
	s. 40	429
	s. 41	217, 218, 219, 224, 275, 276, 277, 429
	s. 44	429
	s. 45	267, 270
	s. 48	322
	s. 51	429
	s. 52	298, 301, 302, 402
	s. 53	219
	s. 55	400, 401
	s. 60	18
	No. I.	18, 31, 32, 39, 294, 296
	No. II.	18, 37
	rule 1	37
	,, 2	37
	,, 3	37
	,, 4	30, 37
	,, 5	37
	,, 6	29, 30, 31, 38
	No. III.	18, 30, 39, 50, 51—60, 81, 95, 235, 270—275, 294, 375
	No. IV.	59
	rule 3	32
	,, 5	60, 271
	,, 9	33, 35
	s. 61 No. VI.	392—399

PAGE

5 & 6 Vict. c. 35. (Income Tax Act, 1842)—
s. 63 39
s. 70 . . . . . 36, 403
s. 73 36
s. 76 22
s. 81 . . . . . 23, 24
s. 88 . . . . . 231, 354
s. 95 188
s. 97 293
s. 100 46
Case 1 46, 100, 150, 195, 203, 204, 205, 206, 207, 208, 209, 211, 212, 214, 226, 243, 249, 255, 256
rule 1 . . . . 46, 52, 88, 136
,, 2 60
,, 3 . . 81, 90, 99, 103, 130, 133, 134, 140, 160, 241, 242, 288
,, 4 . . 82, 248, 249, 256
Case 2 . . . . . 46, 61, 175
rule 1 60
,, 2 60
,, 3 60
Case 3 . . . 46, 63, 188, 243, 244, 262, 265, 293
rule 2 . . . . . 63, 188
,, 3 145
Case 4 46, 63, 193, 194, 196, 200, 201, 202, 203, 204, 206, 210, 211, 213, 248, 256
Case 5 . 46, 63, 193, 194, 200, 201, 203, 204, 205, 206, 210, 212, 215, 256, 277
Case 6 . . . 46, 63, 150, 241, 265, 285
rule 1 to 1st & 2nd Cases 82, 90, 96, 98, 103, 112, 119, 189
,, 2 ,, ,, ,, . . 93, 94
,, 3 ,, ,, ,, . . 61, 429
,, 4 ,, ,, ,, 49, 60, 66—70, 75, 77, 88, 163, 357
s. 101 50, 57, 59, 96, 97, 110, 246, 267, 271, 282, 357, 359, 370
s. 102 . . . . 63, 248, 257, 262, 283
s. 103 . . . . . 261, 268
s. 105 . . . . . 263, 400
s. 106 . . . . . 215, 216
s. 108 . . . . . 214, 215
s. 109 189
s. 118 . . . . . 71, 324
s. 120 . . . . . 297, 300, 302, 400

PAGE

5 & 6 Vict. c. 35. (Income Tax Act, 1842)—
s. 128 400
s. 129 . . . . . 400, 401, 402
s. 131 57
s. 133 . . 60, 71, 72, 165, 357, 371—376, 408
s. 134 . . . 60, 66, 67—72, 74, 331, 357
s. 146 . . . . . 347, 348
s. 159 . . . . . 82, 88, 130, 133
s. 164 72
s. 166 402
s. 173 276
s. 187 398
s. 188 . . . . . 57, 153
s. 190 . . . . . 298, 301, 302
s. 191 17
s. 192 358
5 & 6 Vict. c. 37. (Land Tax Act, 1842)—
s. 5 . . . . . 10, 17
16 & 17 Vict. c. 34. (Income Tax Act, 1853)—
s. 2 . . 46, 123, 199, 205, 216, 262, 293
s. 10 222
s. 40 . 33, 35, 36, 123, 261, 263, 264, 265, 283, 383
s. 47 . . . . . 24, 26
s. 49 232
s. 50 100
s. 51 . . . . . 83, 349
s. 52 . . . . . 83, 99, 147, 349
s. 54 . . . . . 343, 345
s. 55 325
19 & 20 Vict. c. 80. (Taxes Act, 1856)—
s. 1 29
23 & 24 Vict. c. 14. (Income Tax Act, 1860)—
s. 10 402
27 & 28 Vict. c. 18. (Revenue (No. 1) Act, 1864)—
s. 15 . . . . . 33, 261, 383
28 & 29 Vict. c. 30 (Revenue Act, 1865)—
s. 6 371
29 & 30 Vict. c. 36. (Revenue Act, 1866)—
s. 8 . . . . . 55, 56—60
31 & 32 Vict. c. 72. (Promissory Oaths Act, 1868) 9
32 & 33 Vict. c. 67. (Valuation (Metropolis) Act, 1869) . . 13, 20
35 & 36 Vict. c. 82. (Income Tax (Public Offices) Act, 1872)—
s. 1 (1) 11
41 & 42 Vict. c. 15. (Customs & Inland Revenue Act, 1878)—
s. 12 . . . . . 159—187, 292
43 & 44 Vict. c. 19. (Taxes Management Act, 1880)—
s. 5 17

PAGE

43 & 44 Vict. c. 19. (Taxes Management Act, 1880)—
s. 15 430
s. 16 (*e*) 323
s. 26 (2) 8
s. 27 (2) 5, 7
s. 28 . . . . . 3, 4
s. 39 23
s. 43 (2) 13
s. 52 322
s. 53 . . . . . 10, 17
s. 55 430
s. 57 (7) (*c*) 328
(8) 325
(10) 21, 25, 325, 369
s. 59 . . . . . 72, 201, 244
(1) 329
(4) 330
s. 62 (2) 78
s. 68 (2) 391
s. 73 13
(8) 13
s. 86 378
s. 95 377
48 & 49 Vict. c. 51. (Customs and Inland Revenue Act, 1885)—
s. 26 355
50 & 51 Vict. c. 15 (Customs and Inland Revenue Act, 1887)—
s. 18 . . . . . 40, 45
51 & 52 Vict. c. 8. (Customs and Inland Revenue Act, 1888)—
s. 24 (2) 356
(3) 250, 257, 261, 279, 383
c. 21. (Law of Distress Amendment Act, 1888) . . 341
52 & 53 Vict. c. 42. (Revenue Act, 1889)—
s. 12 232
c. 50. (Local Government (Scotland) Act, 1889)—
s. 12 (2) 5
53 & 54 Vict. c. 8. (Customs and Inland Revenue Act, 1890)
s. 23 . 41, 50, 173, 245, 246, 267, 331, 359—376, 408
s. 30 381
56 & 57 Vict. c. 7. (Customs and Inland Revenue Act, 1893)
s. 7 5
57 & 58 Vict. c. 30. (Finance Act, 1894)—
s. 35 . . . . . 33, 95
s. 36 27
59 & 60 Vict. c. 25. (Friendly Societies Act, 1896) . . . 233
c. 28. (Finance Act, 1896)
s. 26 40

PAGE

59 & 60 Vict. c. 28. (Finance Act, 1896)—
s. 27 . . . . . 40, 41
s. 30 13
60 & 61 Vict. c. 24. (Finance Act, 1897)
s. 5 . . . . . 268, 269, 322
61 & 62 Vict. c. 10. (Finance Act, 1898)—
s. 9 . . . . . 94, 108, 112
4 Edw. 7, c. 7. (Finance Act, 1904)—
s. 8 233
4 Edw. 7, c. 23. (Licensing Act, 1904)
s. 3 34
6 Edw. 7, c. 52. (Land Tax Commissioners Act, 1906) . . 3
7 Edw. 7, c. 13. (Finance Act, 1907)—
s. 19 (2) 361, 363
(7) 340
s. 20 335
s. 21 64
s. 22 (2) 430
s. 23 (1) 402
(2) 43, 322, 391, 404
s. 24 . . . . . 72, 371
(2) 51
(3) 53, 75, 408
s. 25 (1) 287, 289
s. 26 (1) 161, 173
(2) 161, 172
(3) 161, 162, 173, 174
(4) 162
s. 28 98
10 Edw. 7, c. 8. (Finance (1909—10) Act, 1910)—
s. 66 (2) 335, 406
s. 68 346
s. 69 27
s. 70 231
s. 71 336
(2) 202
s. 72 (3) 406
(7) 406
(8) 409
1 Geo. 5, c. 2. (Revenue Act, 1911)—
s. 12 337
s. 13 202
s. 14 34
2 & 3 Geo. 5, c. 8. (Finance Act, 1912)—
s. 6 406
3 Geo. 5, c. 3. (Provisional Collection of Taxes Act, 1913) 340, 381

PAGE

3 & 4 Geo. 5, c. 30. (Finance Act, 1913)—
s. 3 351
4 & 5 Geo. 5, c. 10. (Finance Act, 1914)—
s. 2 (3) 20
s. 3 405
s. 5 . 196, 200, 201, 203, 204, 205, 231, 244, 246
s. 7 346
s. 8 27
s. 9 268
s. 10 210
(2) 430
5 & 6 Geo. 5, c. 7. (Finance Act, 1914 (Session 2))—
s. 12 (1) 339
s. 13 (1) 371, 374
(2) 73, 412
(3) 374, 376
s. 17 344
5 & 6 Geo. 5, c. 62. (Finance Act, 1915)—
s. 10 (3) 20
s. 11 247
s. 12 . . . . . 246, 370
s. 13 250
s. 14 243
s. 16 244
s. 18 . . . . . 335, 408
s. 21 232
s. 22 259
5 & 6 Geo. 5, c. 89.
s. 20 (1) 383, 384, 388
s. 22 (1) 40
(4) 44
s. 23 405
s. 25 374
s. 26 344
s. 27 64
s. 28 64
s. 29 338
s. 30 100
s. 31 . . . . . 40, 217, 218, 224, 430
s. 32 214
s. 34 . . . . . 36, 388, 390
s. 35 192
s. 38 418
(3) 419
s. 39 413
s. 40 . . . . . 415, 422
(2) 422

		PAGE
5 & 6 Geo. 5, c. 89.	s. 40 (3)	417
	s. 41	421
	s. 42	425
	s. 43	426
	s. 44	427
	s. 45 (7)	427
	s. 47	356
	Fourth Schedule	415, 423, 424
5 & 6 Geo. 5, c. 93.	(War Loan (Supplemental Provisions) Act, 1915)—	
	s. 3	63

TABLE OF CASES.

A.

PAGE

Aberdeen Commissioners of Supply *v.* Russell 283
——— Town and County Bank, Russell *v.* 89, 94, 98, 107
Ackworth School General Committee *v.* Betts . . 397
Adam *v.* Maughan . . . 399
Addie & Sons *v.* Inland Revenue 273
Aikin, Alexander Ferguson & Co. *v.* 76
——, Burnley Steamship Co. *v.* 170
—— *v.* Macdonald's Trustees 203
Alexander Ferguson & Co. *v.* Aikin 76
Alexandria Water Co. *v.* Musgrave 158
Alianza Co. *v.* Bell 82, 90, 131, 275
Allan *v.* Hamilton Waterworks Commissioners 283
——, Scottish Provident Institution *v.* . . . 130, 330
American Thread Co. *v.* Joyce 230, 326
Anderson, Lanston Monotype Co. *v.* 289, 390
Anderson, Mary Clark Home Trustees *v.* 393
Andrews, Denver Hotel Co. *v.* 207
Anglo-Continental Guano Works *v.* Bell . . 142, 259
Apthorpe, London Bank of Mexico, etc. *v.* . 207

PAGE

Apthorpe, Pommery and Greno *v.* . . 225
——, St. Louis Breweries Co. *v.* . . . 208
——, Tischler & Co. *v.* . 225
Argyll, Duke of *v.* Inland Revenue Commissioners . 398
Arizona Copper Co. *v.* Smiles 101
Armitage *v.* Moore . . 287
Ashton Gas Co. *v.* A.-G. 90, 236, 241
Assets Co. *v.* Forbes . . 144
A.-G., Ashton Gas Co. *v.* 90, 236, 241
——. *v.* Black . . . 154
——. *v.* Borrodaile . . 61
——, Bowles *v.* . . . 381
——. *v.* Lancs. and Yorks. Railway Co. . . 351
——. *v.* London County Council 284
——, London County Council *v.* . . . 284
—— *v.* Scott . . . 281
—— *v.* Till 401
Australasian Mortgage and Agency Co., Smiles *v.* 196, 205
Aylmer, Derby (Earl of) *v.* . 162

B.

Bain *v.* Free Church of Scotland . . . 396
——, Leith, Hull and Hamburgh Steam Packet Co. *v.* 171

PAGE

Baker, English Crown Spelter Co. *v.* . . 88, 131, 135
Balderston, Highland Railway Co. *v.* 137
Bank of England, Bowles *v.* . 380
Banks, Caledonian Railway Co. *v.* 168
Barry *v.* Smart . . . 268
Bartlett *v.* Commissioners of Inland Revenue . . . 408
Basset Mines, Ltd., Bonner *v.* 273
Bater, Humber Conservancy Board *v.* 284
Bedborough, Cumming *v.* . 36
Bell, Alianza Co. *v.* 82, 90, 131, 275
— —, Anglo-Continental Guano Works *v.* . . 142, 259
—— *v.* National Provincial Bank of England . 77
Bennett, Liverpool and London and Globe Insurance Co. *v.* . . . 210, 255
Bensted, Ystradyfodwg and Pontypridd Main Sewerage Board *v.* . . . 190, 294
Berks JJ., Coomber *v.* . . 399
Berry *v.* Farrow . . . 323
Betts, Ackworth School General Committee *v.* . . 397
Birmingham Corporation, *In re* 281, 359
Bishop, Equitable Life Assurance Society of United States *v.* . 255
———, Gresham Life Assurance Society *v.* . 330
———, Stevens *v.* . 29, 30
Black, A.-G. *v.* . . . 154
———, Coltness Iron Co. *v.* 30, 57, 133, 273
Blake *v.* Imperial Brazilian Railway . . 258, 259
—— *v.* Mayor, etc., of London 396
Blakiston *v.* Cooper . . 351
Bloomsbury Income Tax Commissioners, Rex *v.* . 322

PAGE

Blount *v.* Blount . . 262, 268
Bonner *v.* Basset Mines, Ltd. 273
Borrodaile, A.-G. *v.* . . 61
Bowers *v.* Harding . . 350
Bowers, Needham *v.* . . 394
Bowles *v.* A.-G. . . . 381
——— *v.* Bank of England . 380
Brickwood & Co. *v.* Reynolds 104, 105, 106, 107, 111, 112, 118
Brisley, Walker *v.* . . . 21
Brixton Income Tax Commissioners and another, R. *v.* 327, 328
Brooke, Youngs, Crawshay & Youngs *v.* . . 327, 330
Brooks, Colquhoun *v.* 209, 210, 214
——— *v.* Inland Revenue Commissioners . . . 335, 408
Broughton and Plas Power Coal Co. *v.* Kirkpatrick . 157
Brown *v.* Burt . . . 227
——— *v.* Smith . . . 399
Bruce *v.* Burton . . . 369
— —, Usher's Wiltshire Brewery Co., Ltd. *v.* 86, 87, 90, 98, 101, 104, 111, 120, 136, 240, 242, 326
Burnley Steamship Co. *v.* Aikin 170
Burt, Brown *v.* . . . 227
Burton, Bruce *v.* . . . 369

C.

CADWALADER, Cooper *v.* 200, 229
Caledonian Railway Co. *v.* Banks 168
Californian Copper Syndicate *v.* Harris 138
Cape Copper Mining Co., *In re* 51, 372
Carlisle & Silloth Golf Club *v.* Smith 149
Carlisle, Garston Overseers *v.* 262
Carlton, Turner *v.* . . . 20

PAGE
Carter, Clerical, Medical and General Life Assurance Society *v.* 125
Carter, San Paulo (Brazilian) Railway Co. *v.* . 206, 209, 214
Cawse *v.* Nottingham Lunatic Hospital 349
Chadwick *v.* Pearl Life Assurance Co. 264
Charlton *v.* Inland Revenue 349
Chestergate Hat Manufacturing Co., Johnston *v.* . . . 154
Chew, R. *v.* 325
City of Dublin Steam Packet Co. *v.* O'Brien . 284
——— London Brewery Co., Ltd., Furtado *v.* 71, 331, 369
City of London Commissioners, R. *v.* . . 369
——— London Contract Corporation *v.* Styles 89, 133, 134
Clamp & Son, Macgregor *v.* . 379
Clark, Kodak, Ltd. *v.* . . 212
— —, Sun Insurance Office *v.* 240, 247, 251
Clayton *v.* Newcastle-under-Lyme Corporation . 137, 235
Clerical, Medical and General Life Assurance Society *v.* Carter 125
Collins, Drummond *v.* . . 276
Colquhoun *v.* Brooks 209, 210, 214
———, Gillatt and Watts *v.* 98, 110, 132
———, Werle *v.* . . 225
Coltness Iron Co. *v.* Black 30, 57, 133, 273
Cook *v.* Knott . . . 350
Coomber *v.* Berks JJ. . . 399
Cooper, *In re* . . . 265
——— *v.* Cadwalader . 200, 229
———, Blakiston *v.* . . 351
———, Turton *v.* . . . 352
Cork County Council, Matthews *v.* 266
Corke *v.* Fry 334

PAGE
Coulson, Cunard Steamship Co. *v.* 164
Cowperthwaite, Craig (Kilmarnock) Ltd. *v.* . . 310
Craig (Kilmarnock) Ltd. *v.* Cowperthwaite . . . 310
Crawford, Grahamston Iron Co. *v.* 291
Crawshay's Settled Estate, *In re* 409
Crawford, Lochgelly Iron and Coal Co., Ltd. *v.* 155, 193, 272, 273, 290
Crookston Bros. *v.* Furtado 217, 229
Cumming *v.* Bedborough . 36
Cunard Steamship Co. *v.* Coulson 164
Curtis *v.* Old Monkland Conservative Association 333
———, Goold *v.* . . . 345
Cwmmorthin Slate Co., Jones *v.* 287

D.

DARNGAVIL Co. *v.* Francis 237, 240
De Beers Consolidated Mines *v.* Howe . . . 226, 326
Delage *v.* Nugget Polish Co. 264
Denver Hotel Co. *v.* Andrews 207
De Peyer *v.* The King . . 257
Derby (Earl of) *v.* Aylmer . 162
Dillon *v.* Haverfordwest Corporation 235
Dixon, Juson *v.* . . . 379
Drummond *v.* Collins . . 276
Dublin Corporation *v.* McAdam . . . 149, 283
Duncan's Exors. *v.* Farmer . 265
Dundee, Magistrates, etc., of, Musgrave *v.* . . . 397
Dunham, Gundry *v.* . . 21
Durban - Roodeport Gold Mining Co., Stephens *v.* . 231

E.

PAGE
East India Rail. *v.* Secretary of State for India . . 263
Eccott, Wylie *v.* 234
Edinburgh Corporation, Harris *v.* . 295
——— Life Assurance Co. *v.* Lord Advocate 249
——— Life Assurance Co., Revell *v.* . 245, 371
——— Southern Cemetery Co. *v.* Kinmont . 133, 146
Edwards, London County Council *v.* . . . 167, 169
Egyptian Hotels Ltd. *v.* Mitchell 213
Elliots & Parkinson, etc., Grove *v.* 208
Elwood, Pretoria-Pietersburg Railway Co., Ltd. *v.* . . 259
Elworthy Bros. & Co. (Directors of), Revell *v.* . 350
English Crown Spelter Co. *v.* Baker . . 88, 131, 135
Equitable Life Assurance Society of United States *v.* Bishop 255
Erichsen *v.* Last 220
Essex Hall, *Ex parte* (Special Commissioners), Rex *v.* 393, 395

F.

Farie, Inland Revenue (Miller) *v.* 75
Farmer, Duncan's Exors. *v.* 265
——— *v.* Juridical Society of Edinburgh . 397
———, Scottish Institution *v.* . . 213
——— *v.* Scottish North American Trust, Ltd. . 140, 257, 259
———, Tebrau Johore Rubber Syndicate, Ltd. *v.* . 144
PAGE
Farmer, Vallambrosa Rubber Co. *v.* . 88, 131, 145, 286
Farrell *v.* Sunderland Steamship Co. . . . 50, 61
Farrow *v.* Berry . . . 323
Fergusson, Gilbertson *v.* . 222
Fletcher, Foley *v.* . . 264, 275
Foley *v.* Fletcher . . 264, 275
Forbes, Assets Co. *v.* . . 144
———, Religious Tract and Book Society of Scotland *v.* . . 359
——— Scottish Investment Co. *v.* . . . 197
Forth Bridge Railway Co., Lord Advocate *v.* . . 257
Foster, Pickles *v.* . . . 351
———, Turnbull *v.* . . 228
Fowler, Guest Keen & Nettlefolds Ltd. *v.* 85, 90, 290
———, Rhymney Iron Co. *v.* 272, 290
Foyer, Ryhope Coal Co. *v.* 49, 59, 75, 376
Francis, Darngavil Coal Co. *v.* 237, 240
Free Church of Scotland, Bain *v.* 396
Free Church of Scotland, Maughan *v.* . . . 395
Fry, Corke *v.* . . . 334
Fry *v.* Shiel's Trustees 278, 341
Furtado *v.* City of London Brewery Co., Ltd. 71, 331, 369
Furtardo, Crookston Bros. *v.* 217, 229

G.

Garston Overseers *v.* Carlisle 262
Gateshead Corporation *v.* Lumsden 283
Gaunt *v.* Inland Revenue Commissioners . . . 336

PAGE

General Accident, Fire and Life Assurance Corporation *v.* McGowan . . . 252
General Hydraulic Power Co. *v.* Hancock . . 93, 95
Gilbertson *v.* Fergusson . 222
Gillard, Hancock & Co. *v.* 34
Gillatt and Watts *v.* Colquhoun . . . 98, 110, 132
Gillespie, Jardine *v.* . . 148
Glamorgan Quarter Sessions *v.* Wilson 266
Glasgow Corporation Gas Commissioners, Inland Revenue *v.* . . . 235
Glasgow Corporation Water Commissioners *v.* Inland Revenue . . . 235, 282
Glasgow Corporation Waterworks, Miller *v.* . . 282
Glasson, Langston *v.* . . 351
Goold *v.* Curtis . . . 345
Gough, Grainger *v.* . 217, 224
Grahamston Iron Co. *v.* Crawford 291
Grainger & Son *v.* Gough 217, 224
Gramophone and Typewriter Co., Ltd. *v.* Stanley . 213, 326
Granite Supply Association *v.* Kitton . . . 131, 288
Gregory, Hill *v.* . . . 38
Gresham Life Assurance Society *v.* Bishop . . 330
Gresham Life Assurance Society *v.* Styles . . 89, 142, 159, 248, 256
Gribble, Hudson *v.* . 348, 354
Grimes *v.* Lethem . . 331
Grove *v.* Elliots and Parkinson, etc. . . 208
—— *v.* Young Men's Christian Association . 359
Guest, Keen and Nettlefolds, Ltd. *v.* Fowler . 85, 90, 290
Gundry *v.* Dunham . . 21

H.

PAGE

HALL *v.* King's Lynn Harbour Mooring Commissioners . . . 288
—, Wakefield Rural District Council *v.* . 59, 281, 358
Hamilton Waterworks Commissioners, Allan *v.* . . 283
Hancock, General Hydraulic Power Co. *v.* . . 93, 95
Hancock & Co. *v.* Gillard . 34
Hare, Moore & Co. *v.* . 145, 286
Harding, Bowers *v.* . . 350
Harris, Californian Copper Syndicate *v.* . 138
——— *v.* Edinburgh Corporation . . 295
——— *v.* Irvine Corporation 283
Haverfordwest Corporation, Dillon *v.* 235
Herbert *v.* McQuade . . 353
Highland Railway Co. *v.* Balderston . . . 137
Highland Railway Co. *v.* Special Commissioners of Income Tax . . . 75
Hill *v.* Gregory . . . 38
—— *v.* Inland Revenue Commissioners 408
Holtham, Texas Land and Mortgage Co. *v.* . 121, 158
Howe, De Beers Consolidated Mines *v.* . . . 226, 326
Hudson *v.* Gribble . 348, 354
——— Bay Co., Stevens *v.* 142
Humber Conservancy Board *v.* Bater 284
Humphrey *v.* Peare . . 285
Hunter *v.* The King . . 345
Huxley, *re* . . . 276, 322

I.

IMPERIAL Brazilian Railway, Blake *v.* . 258, 259
——— Continental Gas Association *v.* Nicholson . . 235

PAGE

Income Tax Special Purposes Commissioners *v.* Pemsel . . . 349, 351
Incorporated Council of Law Reporting, I. R. *v.* . . . 296
Incorporated Council of Law Reporting, Smith *v.* . 80, 92, 289, 327
Inland Revenue (Miller) *v.* Farie 75
Inland Revenue, Argyll, Duke of *v.* 398
Inland Revenue *v.* Glasgow Corporation Gas Commissioners 235
Inland Revenue, Addie & Sons *v.* 273
Inland Revenue, Bartlett *v.* 408
Inland Revenue, Brooks *v.* 335, 408
Inland Revenue, Charlton *v.* 349
Inland Revenue, Gaunt *v.* . 336
Inland Revenue, Glasgow Corporation Water Commissioners *v.* . . . 235, 282
Inland Revenue, Hill *v.* . 408
Inland Revenue, Middleton *v.* 31, 44
Inland Revenue, Paddington Board *v.* 11
Inland Revenue, Rogers *v.* . 229
Inland Revenue Commissioners *v.* Scott . . . 396
Inland Revenue *v.* Incorporated Council of Law Reporting 296
Inland Revenue Commissioners, Paddington Burial Board *v.* 129
Irvine Corporation, Harris *v.* 283

J.

Jardine *v.* Gillespie . . 148
John Hall, Junior & Co. *v.* Rickman 172

PAGE

Johnston *v.* Chestergate Hat Manufacturing Co., Ltd. . 154
Jones *v.* Cwmmorthin Slate Co. 287
Joyce, American Thread Co. *v.* 230, 326
Juridical Society of Edinburgh, Farmer *v.* 397
Juson *v.* Dixon . . . 379

K.

Kensington Income Tax Commissioners (Aramayo), Rex *v.* 214
King's Lynn Harbour Moorings Commissioners, Sowrey *v.* 237
King's Lynn Harbour Moorings Commissioners, Hall *v.* 288
Kinmont, Edin. Southern Cem. Co. *v.* . . 133, 146
Kirkpatrick, Broughton and Plas Power Coal Co. *v.* . 157
Kitton, Granite Supply Association *v.* . . 131, 288
Kitton, Ogilvie *v.* . . . 209
Knott, Cook *v.* . . . 350
Knowles *v.* McAdam . . 56
Kodak, Ltd. *v.* Clark . . 212

L.

Lamarque, Duke of Norfolk *v.* . . . 30, 37
Lancs. and Yorks. Railway Co., A.-G. *v.* 351
Langston *v.* Glasson . . 351
Lanston Monotype Co. *v.* Anderson . . . 289, 390
Last *v.* London Assurance Corporation . 252, 253, 255
Last, Erichsen *v.* . . . 220
Leeds Corporation, Sugden *v.* 250, 278

PAGE

Leeds Permanent Benefit Building Society *v.* Mallandaine 122
Leith, Hull and Hamburg Steam Packet Co. *v.* Bain 171
Leith, Hull and Hamburg Steam Packet Co. *v.* Musgrave 171
Leslie, Peninsular and Oriental Steam Navigation Co. *v.* 171
Lethem, Grimes *v.* . . . 331
———, Scottish Shire Line, Ltd. *v.* 163
———, Steamship "Glensloy" Co., Ltd. *v.* . . . 52
Lion Brewery Co., Smith *v.* 84, 102, 106, 112, 113, 119, 326
Liverpool and London and Globe Insurance Co. *v.* Bennett . . . 210, 255
Lloyd *v.* Sulley . . . 230
Lochgelly Iron and Coal Co., Ltd. *v.* Crawford 155, 193, 272, 273, 290
London Assurance Corporation, Last *v.* 252, 253, 255
—— Bank of Mexico *v.* Apthorpe . . 207
——— County Council *v.* A.-G. . . . 284
——— County Council *v.* Edwards . . 167, 169
——— County Council, A.-G. *v.* . . . 284
—— Mostyn *v.* . . 38
Lord Advocate *v.* Forth Bridge Railway Co. . . 257
Lord Advocate, Edinburgh Life Assurance Co. *v.* . 249
Lord Advocate *v.* McLaren . 402
Lothian *v.* Macrae . 147, 349
———, Watson Bros. *v.* . 77
Lucas, Mersey Docks *v.* 90, 284
Lumsden, Gateshead Corporation *v* 283

M.

PAGE

Macdonald's Trustees, Aikin *v.* 202
Macgregor *v.* Clamp & Son . 379
McLaren, Lord Advocate *v.* . 402
Macpherson & Co. *v.* Moore . 228
Macrae, Lothian *v.* . 147, 349
McAdam, Dublin Corporation *v.* . . 149, 283
——— Knowles *v.* . . 56
——— Manchester Corporation *v.* . . 397
McGowan, General Accident, Fire and Life Assurance Corporation *v.* . . . 252
McKelvie, Scottish Mortgage Co. of New Mexico *v.* . 194, 196, 206, 211
McQuade, Herbert *v.* . . 353
Magee, Norwich Union Fire Insurance Co. *v.* . . 255
Magistrates, etc., of Dundee, Musgrave *v.* . . . 352
Male, Reid's Brewery Co. *v.* 84, 110, 136
Mallandaine, Leeds Permanent Benefit Building Society *v.* 122
———, Partridge *v.* . 62
Manchester Corporation *v.* McAdam 397
Market Harborough Advertiser Co., Mylam *v.* . . 333
Mary Clark Home Trustees *v.* Anderson . . . 393
Matthews *v.* Cork County Council 266
Maughan *v.* Free Church of Scotland . . 395
———, Adam *v.* . . 399
Maxwell *v.* Nathan and others 14
Mayor, etc., of London, Blake *v.* 396
Mersey Docks *v.* Lucas 90, 284
—— Loan and Discount Co. *v.* Wootton . 249

PAGE

Middlesborough, etc., Benefit Building Society, *Ex parte*, Wythes 122
Middleton *v.* Inland Revenue 31, 44
Miller *v.* Glasgow Corporation Waterworks . . 282
Mitchell, Egyptian Hotels Ltd. *v.* 213
Moore, Armitage *v.* . . . 287
———, *v.* Hare . . 145, 286
———, Macpherson & Co. *v.* . 228
———, *v.* Stewarts and Lloyds, Ltd. 86
Morant *v.* Wheal Grenville Mining Co. . . 274, 275
Mostyn *v.* London . . 38
Mullingar Rural District Council *v.* Rowles . . 282
Musgrave, Alexander Water Co. *v.* 158
——— *v.* Magistrates, etc., of Dundee . . 397
———, Leith, Hull and Hamburg Steam Packet Co. *v.* . 171
, Watney *v.* 84, 85, 90, 92, 108, 110, 111, 112, 114
Mylam *v.* Market Harborough Advertiser Co. . . . 333

N.

NATHAN and others, Maxwell *v.* 14
National Provincial Bank of England, Bell *v.* . . 77
Needham *v.* Bowers . . 394
Newmarket Income Tax Commissioners (Huxley), Rex *v.* 276, 322
New York Life Insurance Co. *v.* Styles . 149, 252, 255
New Zealand Shipping Co. *v.* Stephens . . . 227, 326
Newcastle-under-Lyme Corporation, Clayton *v.* . 137, 235

PAGE

Nicholson, Imperial Continental Gas Association *v.* 235
Nizam's Guaranteed State Railway Co. *v.* Wyatt . 258
Nobel Dynamite Trust Co. *v.* Wyatt 212
Norfolk, Duke of *v.* Lamarque 30, 37
Northern Assurance Co. *v.* Russell 198
Northern Investment Co. of New Zealand, Smiles *v.* 196, 206
Norwich Union Fire Insurance Co. *v.* Magee . . . 255
Nottingham Lunatic Hospital, Cawse *v.* 394
Nugget Polish Co., Delage *v.* 264

O.

OFFLOW General Income Tax Commissioners, Rex *v.* . 328
O'Brien, City of Dublin Steam Packet Co. *v.* . . 284
Ogilvie *v.* Kitton . . . 209
Old Monkland Conservative Association, Curtis *v.* . 333
Ounsworth *v.* Vickers, Ltd. 134

P.

PADDINGTON Burial Board *v.* Commissioners of Inland Revenue 129
Paisley Cemetery Co. *v.* Reith 146
Partridge *v.* Mallandaine . 62
Peare, Humphrey *v.* . . 285
Pearl Life Assurance Co., Chadwick *v.* 264
Pemsel, *Ex parte* (Special Commissioners), Rex *v.* 394, 396
Peninsular and Oriental Steam Navigation Co. *v.* Leslie 171
Peyer de *v.* The King . . 257
Pickles *v.* Foster . . . 351

PAGE

Pommery & Greno *v.* Apthorpe 225
Portobello Town Council *v.* Sulley 146
Pretoria-Pietersburg Railway Co., Ltd. *v.* Elwood . . 259
Psalms and Hymns, Trustees of *v.* Whitwell . . . 400
Purdie *v.* Rex 270

R.

R. *v.* Bloomsbury Income Tax Commissioners . . . 322
— *v.* Brixton Income Tax Commissioners and Another . . 327, 328
— *v.* Chew and Others . . 325
— *v.* City of London Commissioners . . . 369
— *v.* De Peyer . . . 257
—, Hunter *v.* 345
— *v.* Kensington Income Tax Commissioners (Aramayo) 214
— *v.* Newmarket Income Tax Commissioners (Huxley) . 276, 322
— *v.* Offlow General Income Tax Commissioners . 328
—, Purdie *v.* 270
— *v.* Special Commissioners (*Ex parte* Essex Hall) 393, 395
— *v.* Special Commissioners (*Ex parte* Pemsel) 394, 396
— *v.* Special Commissioners (*Ex parte* University of North Wales) . . 395
— *v.* Special Commissioners Yorkshire Penny Bank 399
Reid's Brewery Co. *v.* Male . 84, 110, 136
Reith, Paisley Cemetery Co. *v.* 146
——, Walker *v.* 191
Religious Tract and Book Society of Scotland *v.* Forbes 359

PAGE

Revell *v.* Edinburgh Life Assurance Co. . 245, 371
——— *v.* Elworthy Bros. & Co., Directors of . 350
——— *v.* Scott . . 31, 44
Reynolds, Brickwood & Co. *v.* 104, 105, 106, 107, 111, 112, 118
Rhymney Iron Co. *v.* Fowler 272, 290
Rickman, John Hall, Junior & Co. *v.* . . 172
——— Turner (Leicester), Ltd. *v.* . . . 226
Rogers *v.* Inland Revenue . 229
Rowles, Mullingar Rural District Council *v.* . . 282
Royal Insurance Co. *v.* Watson . . . 139, 157
Russell, Aberdeen Commissioners of Supply *v.* . . 283
Russell *v.* Northern Assurance Co. . . 198
——— *v.* Town and County Bank, Aberdeen 89, 94, 98, 107
Ryhope Coal Co. *v.* Foyer 49, 59, 75, 376

S.

St. Andrew's Hospital, Northampton *v.* Shearsmith . 400
St. Louis Breweries Co. *v.* Apthorpe 208
San Paulo (Brazilian) Railway Co. *v.* Carter 206, 209, 214
Sandie & Hull, Watson *v.* . 225
Savill Bros., Southwell *v.* . 120
Scoble, Secretary of State for India *v.* . . . 131, 264
Scott, A. G. *v.* 281
——— Commissioners of Inland Revenue *v.* 396
Scott, Revell *v.* . . 31, 44
Scottish Institution *v.* Farmer 213
——— Investment Trust Co. *v.* Forbes . . 197

PAGE
Scottish Mortgage Co. of New Mexico *v.* McKelvie 194, 196, 206, 211
——— Provident Institution *v.* Allan . 130, 330
——— North American Trust, Ltd., Farmer *v.* . 140, 257, 259
——— Shire Line, Ltd. *v.* Lethem . . . 163
——— Union and National Assurance Co. *v.* Smiles . 247
Secretary of State for India *v.* Scoble . . . 131, 264
Secretary of State for India, East India Railway Co. *v.* . 263
Shearsmith, St. Andrew's Hospital, Northampton *v.* . 400
Shiel's Trustees, Fry *v.* 278, 341
Shrewsbury *v.* Shrewsbury 36, 268
Smart, Barry *v.* . . . 268
Smiles *v.* Australasian Mortgage and Agency Co. 196, 205
——— *v.* Northern Investment Co. of New Zealand . . 196, 206
Smiles, Arizona Copper Co. *v.* 101
———, Scottish Union and National Assurance Co. *v.* . . . 247
Smith *v.* Incorporated Council of Law Reporting 80, 92, 289, 327
——— *v.* Lion Brewery Co. 84, 102, 106, 112, 113, 119, 326
———, Brown *v.* . . . 399
———, Carlisle, Silloth Golf Club *v.* . . . 149
———, Tennant *v.* . 58, 334
———, Westinghouse Brake Co. *v.* . . . 136
Smyth *v.* Stretton . . 353
Southwell *v.* Savill Bros. . 120
Sowrey *v.* King's Lynn Harbour Moorings Commissioners 237
PAGE
Special Commissioners of Income Tax, Highland Railway Co. *v.* 75
Stanley, Gramophone and Typewriter Co., Ltd. *v.* 213, 326
Steamship "Glensloy" Co., Ltd. *v.* Lethem . . . 52
Stephens, New Zealand Shipping Co. *v.* . . . 227, 326
Stevens *v.* Bishop . . 29, 30
——— *v.* Durban Roodeport Gold Mining Co. . 231
——— *v.* Hudson Bay Co. . 142
Stewart *v.* Conservators of the River Thames . . 398
Stewarts and Lloyds, Ltd., Moore *v.* 86
Stockham *v.* Wallasey Urban District Council . . . 78
Stretton, Smyth *v.* . . 353
Strong & Co. *v.* Woodifield 86, 90, 157
Sturmey Motors, Ltd., *In re* . 35
Styles, City of London Contract Corporation *v.* 89, 133, 134
———, Gresham Life Assurance Society *v.* 89, 142, 159, 248, 256
———, New York Life Assurance Co. *v.* . 149, 252, 255
Sugden *v.* Leeds Corporation 250, 278
Sulley, Lloyd *v.* . . . 320
——— Portobello Town Council *v.* . . . 146
Sun Insurance Office *v.* Clark 240, 247, 251
Sunderland S. S. Co., Farrell *v.* . . . 50, 61

T.

TEBRAU Johore Rubber Syndicate, Ltd. *v.* Farmer . 144
Tennant *v.* Smith . . 58, 334

PAGE

Texas Land and Mortgage Co. *v.* Holtham . . 121, 158
Thames Conservators, Stewart *v.* 398
Till, A.-G. *v.* 401
Tischler *v.* Apthorpe . . 225
Turnbull *v.* Foster . . 228
Turner *v.* Carlton . . . 20
——— (Leicester), Ltd. *v.* Rickman 226
Turton *v.* Cooper . . . 352

U.

University of North Wales, *Ex parte* (Special Commissioners, Rex *v.*) . . . 395
Usher's Wiltshire Brewery Co., Ltd. *v.* Bruce 86, 87, 90, 98, 101, 104, 111, 120, 136, 240, 242, 326

V.

Vallambrosa Rubber Co. *v.* Farmer . 88, 131, 145, 286
Vickers, Ltd., Ounsworth *v.* . 134

W.

Wakefield Rural District Council *v.* Hall . 59, 281, 358
Walker *v.* Brisley . . . 21
———. *v.* Reith . . . 191
Wallasey, Urban District Council, Stockham *v.* . 78
Watney *v.* Musgrave 84, 85, 90, 92, 108, 110, 111, 112, 114
Watson *v.* Sandie & Hull . 225
———, Royal Insurance Co. *v.* 139, 157

PAGE

Watson Bros. *v.* Lothian . 77
Webber, Wingate & Co. *v.* . 223
Werle & Co. *v.* Colquhoun . 225
Westinghouse Brake Co., Smith *v.* 136
Wheal Grenville Mining Co., Morant *v.* . . . 274, 275
Whitwell, Psalms and Hymns, Trustees of *v.* . . . 400
Wilson, Glamorgan Quarter Sessions *v.* 266
Wingate & Co. *v.* Webber . 223
Woodifield, Strong & Co. *v.* 86, 90, 157
Wootton, Mersey Loan and Discount Co. *v.* . . 249
Wyatt, Nobel Dynamite Trust Co. *v.* 212
———, Nizam's Guaranteed State Railway Co. *v.* 258
Wylie *v.* Eccott . . . 234
——— Hill *v.* Commissioners of Inland Revenue . . 408
Wythes, Middlesborough, etc., Benefit Building Society, *Ex parte* 122

Y.

Yorkshire Penny Bank (Special Commissioners), Rex *v.* 399
Young, *In re* 229
——— Men's Christian Association, Grove *v.* . . 359
Youngs, Crawshay & Youngs *v.* Brooke . . . 327, 330
Ystradyfodwg and Pontypridd Main Sewerage Board *v.* Bensted . . . 190, 294

INTRODUCTION.

The raising of Revenue by means of an Income Tax has become an accepted policy of countries other than the United Kingdom, and the tendency of modern times is to increase direct taxation with a corresponding decrease of indirect impositions, so as to remove the universality of application inseparable from indirect taxation. Moreover, the flexibility of the Income Tax in regard to increasing its yield by the simple expedient of increasing the rate in the £ is invaluable for emergencies such as war. The British Income Tax is of ancient origin, and much of the existing law was largely drawn from the old statutes. The Income Tax Act of 1842, which is the most extensive Act of the existing code, was practically a reprint of the Income Tax Act of 1806, thus considerable antiquation has been transmitted to the present day, as, obviously, modern trading conditions are not comparable with those of over 100 years ago.

Early Income Tax Acts.

Income Tax Acts were passed in 1799, 1803, 1805, and 1806. The next, that of 1842, is the first of the long series extending to the present day.

General Principles of the Income Tax.

An outstanding feature of the Income Tax is that the *practice* is much more liberal than the *law*.

ADMINISTRATION.

The local control of the Income Tax is placed in the hands of "District" or "General" Commissioners, who are unpaid and form independent bodies; the principle being enunciated that the taxpayer should have a medium of justice to prevent official domination, a factor which is of no mean significance when the basis of the Income Tax is of such a vague and comparatively indefinable nature as "profits." Another body—Special Commissioners—was introduced to give an option to the taxpayer who would desire to remove the privacy of his financial affairs from local hands to a Government department.

The Revenue interests are attended to by Surveyors of Taxes, who are civil servants.

SCHEDULES OF CHARGE.

The assessable profits have been divided into five Schedules, A, B, C, D, and E.

A. covers lands and property, and the basis is the full annual value, or rack rent. A deduction is allowed for repairs. The assessment is made on the occupier, who deducts the tax from his rent.

B. is primarily a tax on the profits of farmers, and the basis of assessment is the annual value assessed under Schedule A, such amount being an estimate of the probable and average profits of farmers. The occupier bears this tax, but may claim to be assessed under Schedule D or on actual profits.

C. is a tax on dividends, etc., payable out of public funds, and tax is not assessed direct on the recipient, but is received by him less the amount of tax.

D. is the main Schedule and covers profits of trade, professions, and occupations generally.

E. taxes salaries, etc., paid by public authorities, limited companies, etc.

Manual workers are assessable quarterly.

The profits of trade for Income Tax purposes are not the actual profits in a commercial sense, but an adjusted profit arrived at by:

(*a*) disallowing certain expenses which are, commercially, legitimate trading expenses.

(*b*) taking the average profits, so adjusted, for certain specific periods, three years being the main period of average. Mines, *e.g.*, carry a five-years average. Waterworks, railways, tolls, and similar subject-matters of assessment are assessed with reference to the profits of the preceding year.

The Average System.

The average system is not equitable in that a declining business is, in a particular year, taxed on a sum in excess of its profits, whilst the converse applies to an expanding business. The system is, however, primarily of political significance as it avoids the effect of a bad year of trade experienced by the country at large being borne by one year, and consequently removes the necessity of frequent adjustments of rates in the £ or of increasing the yield of other taxes, direct or indirect.

Rates in the £.

The rate in the £ has varied widely, and in 1915–16 the basic rate is 3*s*.

In 1907 a new system was introduced by a differentiation between, broadly, (*a*) incomes derived from property, dividends, etc., requiring no personal exertion; and (*b*) incomes directly derived from active personal exertion. The former was styled "unearned" and the latter "earned." The rates enacted by the Finance Act (No. 2), 1915, are–

Unearned: 3*s*. with reductions in respect of small incomes; and

Earned: 1*s*. $9\frac{3}{5}$*d*. with graduated increases for incomes exceeding £1000.

Super Tax.

The Finance (1909–10) Act, 1910, introduced a new tax in the Super Tax, which is an additional Income Tax and is levied on large incomes. The Finance Act of 1914 amended the incidence by substituting a graduated system, less anomalous than the original provisions.

Exemption and Abatements.

The Income Tax is not imposed when the total income from all sources does not exceed £130 per annum, and between that sum and £700, a graduated scale of abatements applies.

Insurance Premiums.

A deduction is made for Life Insurance Premiums.

Children.

An allowance is now made in respect of children, with limits as to age, etc.

Adjustments.

Income assessments are subject to appeal by the party assessed, and the Acts contain provisions for dealing with *e.g.* a loss arising in the year of assessment.

Cases Stated.

Questions of *fact* are solely determinable by the Commissioners, but a case may be required for the opinion of the High Court on points of *law*.

Excess Profits Duty.

The existence of war has evolved a further tax on profits in the Excess Profits Duty, which is, in effect, an appropriation by the State of a portion of that part of the profit which exceeds the normal level obtaining prior to commencement of war.

LIST OF ABBREVIATIONS OF REPORTS.

A. C.	Law Reports, Appeal Cases, House of Lords and Privy Council.
App. Cas.	Law Reports, Appeal Cases, but earlier series.
Ch.	Law Reports, Chancery, Divisional Court and Court of Appeal.
Ex. D.	Law Reports, Exchequer Division.
F.	Fraser.
H. & C.	Hurlstone and Coltman.
I. R.	Irish Reports.
J. P.	Justice of the Peace.
Jur. (N. S.)	Jurist Reports (New Series).
K. B.	Law Reports, King's Bench, Divisional Court and Court of Appeal.
L. G. R.	Local Government Reports.
L. J.	Law Journal Reports, K. B. added for King's Bench, Q. B. for Queen's Bench, Ex. for Exchequer Division, and Ch. for Chancery Division.
L. T.	Law Times Reports.
M. & W.	Meeson and Welsby.
Q. B.	Law Reports, Queen's Bench Divisional Court and Court of Appeal.
Q. B. D.	Law Reports, Queen's Bench Divisional Court and Court of Appeal, earlier series.
R.	The Reports.
R.	Rettie.
S. C.	Session Cases.
Sc. L. R.	Scottish Law Reporter.
Sol. Jo.	Solicitors' Journal.
Tax Cas.	Tax Cases.
T. L. R.	Times Law Reports.
W. N.	Weekly Notes.
W. R.	Weekly Reporter.

INCOME TAX AND SUPER TAX PRACTICE AND LAW

CHAPTER I

ADMINISTRATION

An essential basis of a successful connexion with Income Tax is an acquaintance with the respective powers and limitations of the various officials engaged in the administration. The law of Income Tax is, in many respects, harsh and inequitable, but much of the prevailing hardship may be mitigated by an application of the practice in its existent broadness. It should, however, be taken as a general principle in connexion with the administration of the tax, that practically all desired and accepted points of equity which clash with the law, are never offered to the public but have to be demanded. The importance of this cannot be over estimated, and, moreover, as the practice is, in general, left to the respective discretions of each local body of Commissioners, it follows that there is a lack of uniformity throughout the country.

It is, although inconsistent with a properly imposed tax, a vital fact that the Income Tax practice, as opposed to the actual law, has, in general, to be advanced *by the taxpayer* if he desires an equitable construction instead of the operation of a hard technical point in which the Income Tax Acts abound; therefore a comprehensive grasp of the constitution of the officials is a necessity to a successful practice in Income Tax.

The officials with whom a taxpayer is brought into contact are Commissioners, Clerk to Commissioners, Surveyor of Taxes, and Assessor and Collector of Taxes.

COMMISSIONERS.

Practically the sole conduct of Income Tax administration is entrusted to Commissioners, of whom there are two bodies—

(*a*) Local Commissioners, styled "Commissioners for General Purposes" and officially referred to as "District Commissioners";

(*b*) Special Commissioners.

The former bodies are distributed throughout Great Britain in divisions of varying size, while the latter have offices in London and hold meetings in certain centres. Ireland is dealt with by Special Commissioners alone.

The taxpayer may exercise the option of assessment by either body of Commissioners, but, comparatively, assessment by Special Commissioners is seldom resorted to. The advantages of the option are discussed at p. 15.

The local Commissioners are in no way interested in the amount of Revenue produced under their jurisdiction, and their duties are to see that the scales of justice are held fairly between the Surveyor of Taxes and the taxpayer; and, in order to carry out the original intentions of the legislature, the Commissioners are allowed, for all material purposes, despotic discretionary powers on matters of hardship. The Commissioners may, in many instances, cast aside a harsh construction of a disputed point and adopt a construction consistent with equity and justice, except on certain definite and admittedly disputable matters such *e.g.* as allowance in respect of wasting assets. Surveyors of Taxes often advocate adherence to points of law which are devoid of any pretence to equity, and, as the strict interpretation of such technical points (although flagrantly inconsistent with the obvious intentions of the framers of the law) is favourable to the Surveyor of Taxes' contention,

he often gains his point, but the Commissioners' ruling on the question is, with few exceptions, accepted by the Surveyor of Taxes as conclusive. On a point of *law* the Surveyor of Taxes has power to demand a case to be stated by the Commissioners for the opinion of the High Court, but this is an exceptional proceeding as the position of the Commissioners from the point of view of admitted discretionary power is one which the Board of Inland Revenue (under whose authority Surveyors of Taxes are placed) recognizes as being necessary to the satisfactory working of a tax of the peculiar characteristics of the Income Tax. The extent of the practice of Income Tax being widely divergent from the actual law, and such practice being only brought into operation on the demand of the taxpayer, it is necessary that the functions of the Commissioners, who control the practice, should be thoroughly understood.

The District Commissioners are *absolutely* independent of the Board of Inland Revenue and of any other Government department, except in irrelevant details such as increasing the number of Commissioners. (Taxes Management Act, 1880, sec. 28.)

Appointment of District Commissioners.—District Commissioners, who form an honorary body analogous in operation to a bench of Magistrates, are appointed by Land Tax Commissioners—a body considerably extended by the Land Tax Commissioners Act, 1906, which Act, in practice, is defunct. Magistrates are ex-officio Land Tax Commissioners. The duties of the latter Commissioners are, in effect, restricted to the appointment of District Commissioners, a duty of very occasional recurrence. In some cases co-optation is the method adopted.

The appointment is governed by secs. 4–8, 17 and 21 of the Income Tax Act, 1842.

Number of Commissioners.—The meeting of the Land Tax Commissioners is given notice in the *London Gazette* for England and Wales, and the *Edinburgh Gazette* for Scotland,

and as this notice is the only one statutorily requisite, the attendance at the Meeting is usually confined to the District Commissioners of the particular district (who are of course also Land Tax Commissioners), thus instituting co-optation. In some instances an advertisement of the Meeting is inserted in a local County paper. The Meeting is convened by the Clerk to the District Commissioners.

The number of District Commissioners for a division or district is fixed at seven by sec. 4 of the Income Tax Act, 1842, which also requires the making of a list of seven to supply vacancies.

Extensions are authorized by sec. 21 of the Income Tax Act, 1842, which allows District Commissioners to appoint further Commissioners not exceeding seven in number "observing, with regard to such appointments, the same rules as in the first appointment of Commissioners for general purposes, **but nevertheless without adding thereto any persons to supply their vacancies.**"

Sec. 28 of the Taxes Management Act, 1880, also provides :—

The Board may, if they think fit, authorize the increase of the number of persons to be chosen general Commissioners for any division, **and of persons to supply vacancies** amongst such Commissioners to any number not exceeding fourteen respectively, and such persons shall be appointed and chosen according to the regulations contained in sec. 4 of the Income Tax Act, 1842.

On the Meeting being held a selection is made to fill vacancies, if any, and also to bring the list to supply vacancies up to its standard of seven or fourteen. Residence in the division is not an essential of appointment.

A list of the names selected at the Meeting should be forwarded to the Board of Inland Revenue.

Increase in Number. Sec. 28 (5) of the Finance (No. 2) Act, 1915, in dealing with quarterly assessment of manual workers, allows the general Commissioners, if they think it

necessary for expediting the hearing of appeals, to add to their number by appointment (p. 3) or co-optation of such persons "for the purpose" as they think fit.

Exceptional Methods of Appointment.—Additional appointments are authorized by sec. 5 of the Income Tax Act, 1842, in respect of the undermentioned cities and towns, the Commissioners so appointed acting with those appointed in the ordinary manner.

City of London.—"Two Commissioners, and two to supply their vacancies, shall be named by the Mayor and Aldermen of London out of eight persons, four of whom shall be Aldermen, to be returned to them by the Common Council; two other Commissioners, and two to supply their vacancies, by the Bank of England"; one other Commissioner, and one other to supply his vacancy, by the Royal Exchange Assurance Company, the London Assurance Company, the East and West India Dock Company, the London Dock Company, and the Saint Katherine Dock Company.

Norwich.—The Magistrates and justices of the peace for the City of Norwich are allowed to choose eight Commissioners and eight to supply vacancies, half of each to be chosen from such magistrates and justices and half from the inhabitants of the City.

Birmingham, Bristol, Exeter, Great Yarmouth, Hull, King's Lynn, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne. The magistrates and justices of the peace for these cities and towns, together with the justices of the peace for the county, riding, or division, wherein such cities or towns are situate, are authorized to select eight Commissioners and eight to supply vacancies.

A list of the above selections has to be forwarded to the Board of Inland Revenue.

The Commissioners selected by the Land Tax Commissioners, and by the above-mentioned methods, together act for the respective districts in which the said cities and towns shall be situate or shall in themselves form.

Scotland.—Commissioners may be appointed in Scotland by the Commissioners of Supply at the annual meeting held in pursuance of sec. 12 (2) of the Local Government (Scotland) Act, 1889, as well as by the ordinary method. (Sec. 7 of the Customs and Inland Revenue Act, 1893.) It is further provided by sec. 27 (2) of the Taxes Management Act, 1880, that, "The sheriff depute or substitute of any county or division in Scotland for the time being shall be ex-officio **and without other qualification** a general Commissioner for such county or division."

Commissioners ceasing to act.—The removal of Commissioners from the acting list is governed by sec. 7 of the Income Tax Act, 1842, which allows a vacancy to be created on a Commissioner dying or declining to act.

Qualifications.—The general qualification of a District Commissioner is either :—

(*a*) The possession in Great Britain, of his own estate of lands, tenements, or hereditaments of an annual value of not less than £200 either freehold or copyhold, or leasehold having an unexpired term of not less than seven years "over and above all ground rents, incumbrances and reservations payable out of the same," or

(*b*) The possession of personal estate of the value of £5000, or, a personal estate or an interest therein producing an annual income of £200, or

(*c*) A combination of (*a*) and (*b*) producing £200 per annum (£100 personal estate being accepted as equivalent to £4 per annum), or

(*d*) Being eldest son of a person who is possessed of thrice of either of the values required above.

The above provisions apply to all *districts or divisions* in England excepting such cities and towns which are separate divisions for Income Tax purposes, other than Lincoln, any of the Ridings of Yorkshire and the cities and towns for which there are exceptional methods of appointment (p. 5). The qualification required where the ordinary qualification does not

apply is four-fifths of the latter, and such reduced qualification also applies to Wales and the County of Monmouth.

For SCOTLAND the qualification of a Commissioner for a *Shire* is either :—

(*a*) To be enfeoft in superiority or property, or possessed as proprietor or life renter, of lands in Scotland to the extent of £150 Scots per annum valued rent, or

(*b*) or (*c*) (*supra*), or

(*d*) Being the eldest son of a person enfeoft or possessed of an estate of twice of either of the said values. The qualification for any City or Borough in Scotland, forming a separate division, is three-fifths in value of that requisite in the case of a Commissioner for a Shire. (See also sec. 27 (2), Taxes Management Act, 1880, p. 5.)

It is provided by sec. 14 of the Income Tax Act, 1842, that "no estate consisting of lands or tenements, as the qualification of a Commissioner, shall be required to be situate in the county, riding (*or*) division, for which any person shall be a Commissioner."

On a Commissioner being appointed he is requested to state by letter that he is legally qualified to act, but he can be required so to state on oath.

A financial qualification is not required in the following cases :—

> Provided also, that nothing herein contained shall be construed to require any qualification of a Commissioner in the district of the palaces of Whitehall and Saint James Westminster, for any officer who shall have heretofore acted or may hereafter act as a Commissioner for putting in execution the said Land Tax Act in the said district, other than the possession of their respective offices ; nor in any shire in Scotland, for any provost, baillie, dean of guild, treasurer, master of the merchants company, or deacon convenor of the trades for the time being of any royal burgh in Scotland, nor any baillie for the time being of any borough of regality or barony of Scotland, nor the factors for the time being on the several forfeited estates annexed to the Crown by an Act passed in the twenty-fifth year of the reign of King George the Second, who shall be respectively appointed Commissioners for executing the said Land Tax Act in any

shire in Scotland ; nor for any Commissioner for special purposes acting in the execution of any of the powers or provisions of this Act. (Sec. 15 of Income Tax Act, 1842.)

Additional Commissioners.—The law provides for appointment of "Additional Commissioners" who, theoretically, are formed into local committees, but, in practice, advantage is taken of sec. 21 of the Income Tax Act, 1842, which permits the General Commissioners to execute the duties required of the "Additional Commissioners." These duties consist of making the initial Schedule D assessments so that the appeals against such assessments, being heard by the General Commissioners, are not determined by the actual individual Commissioners who made them. The practice is, therefore, for any two of the General Commissioners to sign a particular Schedule D book of assessments as Additional Commissioners and for those two Commissioners not to hear the appeals against such particular assessments for the year in which they so act as Additional Commissioners.

Additional Commissioners may, however, be specifically appointed by and at the discretion of the General Commissioners in such number as the latter may think fit, unless the option of increasing the number of General Commissioners under sec. 21 of the Income Tax Act, 1842 (p. 4), has been taken. Not more than seven Additional Commissioners may sit together at a meeting.

The qualification of an Additional Commissioner is one-half of that for a General Commissioner.

Meetings of Commissioners.—The holding of meetings of Commissioners outside the division for which they act is permitted with the consent of the Board of Inland Revenue, but the Commissioners have the sole discretionary powers in the instances mentioned in sec. 26 (2) of the Taxes Management Act, 1880, which enacts that :—

> They may meet and do any act in execution of the said acts as Commissioners within any city, town, or place, being a county of itself, or otherwise having exclusive jurisdiction and

situated within, surrounded by, or adjoining to their respective divisions.

A failure of the Commissioners to hold meetings within prescribed times does not render invalid the subsequent holding of such meetings except in the case of appointment of collector, as at p. 13.

Property of Books.—The law provides that "all assessments, duplicates of assessments, minute books, and other public books and papers" relating to the Income Tax and in the custody of any clerk, assessor, or collector, are the property of the Commissioners.

Oath of Secrecy. Before commencing to act, a Commissioner has to make the following declaration of secrecy which, as with Clerks to Commissioners, Assessors, Surveyors of Taxes, &c., applies only to Schedule D. The Income Tax Acts do not provide for the secrecy of matters pertaining to Schedule E.

I, A. B.,
of C.,
do solemnly, sincerely, and truly declare and affirm that I will truly, faithfully, impartially and honestly, according to the best of my skill and knowledge, execute the powers and authorities vested in me by an Act passed in the seventeenth year of the reign of Queen Victoria, intituled "An Act for "granting to Her Majesty Duties on Profits arising from "Property, Professions, Trades, and Offices," and that I will exercise the powers entrusted to me by the said Act, and the several other Acts relating to the said Duties, in such manner only as shall appear to me necessary for the due execution of the same; and that I will judge and determine upon all matters and things which shall be brought before me under the said Acts without favour, affection, or malice; and that I will not disclose any particular contained in any schedule or statement delivered with respect to any Duties charged under the provisions and regulations relating to Schedule (D) of the said Act, passed in the seventeenth year of Her said Majesty, or any evidence or answer given by any person who shall be examined, or shall make affidavit, deposition, or affirmation respecting the same, in pursuance of the said Acts, excepting in such cases and to such persons only who have been sworn or in lieu of being sworn to the due execution of the said Acts, shall have made and subscribed the Declaration substituted for

an Oath, by the "Promissory Oaths Act, 1868," and where it shall be necessary to disclose the same for the purposes of the said Acts, or to the Commissioners of Inland Revenue, or in order to or in the course of a prosecution for perjury committed in such examination, affidavit, deposition or affirmation; and I make this Declaration in pursuance of the "Promissory Oaths Act, 1868."

CLERK TO COMMISSIONERS.

The Clerk to the Commissioners is an official with whom the taxpayer is seldom brought into contact, but, as adviser to the Commissioners, he wields the enormous discretionary powers vested in the latter, and his position is intended to be that of an intermediary between the demands of the Revenue and the rights of the public. In many districts the Clerk to Commissioners, under the existing practice, occupies a secondary position, a proceeding which is detrimental to the taxpayer. It cannot be too generally recognized that the Clerk to Commissioners, as the Commissioners' representative, has ample power to prevent Crown domination and to secure justice for the public, but, as with Income Tax practice generally, it is essential that the taxpayer *demands* the operation of the powers in question.

Appointment.—The Clerk to Commissioners holds an annual appointment which has to be renewed at the first meeting of the Commissioners in the year, which meeting is to be held before the 10th April in England and before the 30th April in Scotland (but see p. 13). An Assistant Clerk may also be appointed if the Commissioners so desire.

No fee is to be paid by the public to a Clerk to Commissioners "for anything to be done by him as Clerk."

Remuneration.—Clerks to Commissioners were formerly paid by poundage, but, in 1891, a commuted allowance was substituted, on the basis of the amount paid in poundage for the year 1890. The Treasury, on the recommendation of the Board of Inland Revenue, may grant such "additional remuneration as they may deem expedient." The practice in

obtaining increased allowances is not uniform, some Clerks to Commissioners making application to the Board year by year and others doing so at lengthy intervals. Owing to the considerable expansion of the work of the Clerk to Commissioners, additional allowances are granted on the statistics proving such expansion.

A question arises on the Board of Inland Revenue taking advantage of sec. 5 of 5 & 6 Viet. c. 37 or sec. 53 of the Taxes Management Act, 1880 (p. 17) and transferring part of one division to another. The Board has no specific power to divide the remuneration of the Clerk to Commissioners in the former division, and has refused to increase the remuneration of the Clerk to Commissioners in the latter division, but, as the Board has power to create a new division out of detached parishes (*sec. 5 above*), it is obvious that the Board must have power to find remuneration for the Clerk to Commissioners of a new division, therefore under such powers the Board could award extra remuneration to the Clerk to Commissioners of the enlarged division. Moreover, by sec. 1 (1) of the Income Tax (Public Offices) Act, 1872, the Treasury is authorized to assign, "if they think special circumstances require it," such remuneration as the Treasury may deem expedient.

The *payment* of remuneration has been altered by the following circular to Clerks to Commissioners:—

Inland Revenue,
Somerset House,
London, W.C.
17*th January*, 1913.

Sir,

I am directed by the Board of Inland Revenue to acquaint you that they have recently had under consideration the rules regulating advances of remuneration to Clerks to Commissioners whose commuted allowance amounts to £300 per annum and upwards. Under those rules a first advance of 30 per cent. (in pounds only) has been payable in the month of October in each year, and a second advance of 35 per cent. in the month of January following.

The Board have now authorized payment of the first advance of 30 per cent. as soon as (*a*) all the Schedule D returns have

been entered in the Assessments and delivered to the Surveyor, and (*b*) one-third of the Schedule A work has been completed. (In years of new assessment under Schedules A and B, condition (*b*) will be held to mean that all duplicates shall have been completed in skeleton.) The first advance should thus be payable at a period considerably earlier than October. The Certificate of Appointment under the hands of two District Commissioners should be sent to the Accountant and Comptroller-General not as formerly by the 1st October, but as soon as the work (*a*) and (*b*) has been completed, and should be accompanied by an intimation to that effect.

The normal time for payment of the second advance will remain unaltered, *i.e.* such advance will be paid, as hitherto, in January of each year, but if application be made for payment of the second advance previous to the month of January it will be considered on its merits. It will be uniformly required in such cases that the Schedules A and B, House Duty and Land Tax work shall have been completed, and four months have elapsed since the first advance became payable; but favourable consideration will depend upon a review of the work as a whole. As the result of the new arrangement where a Clerk to Commissioners has been in a position to receive the first advance by mid-July, an application for the second advance would be considered after mid-November, if the necessary work were then completed.

The Board have left untouched the rules now existing so far as regards the payment of the balance of remuneration (*a*).

I am,
Sir,
Your obedient Servant,
J. E. CHAPMAN,
Secretary.

SURVEYOR OF TAXES.

The appointment of Surveyor of Taxes is held from the Treasury and is a competitive Civil Service appointment. The limited powers of this official are dealt with at p. 297. The bulk of the work of making Assessments is performed by the Surveyor, who is the official in most frequent connexion with the public. His powers are mainly existent under the implied authority of the Commissioners, as he has no statutory authority to demand the production by the taxpayer of any accounts or material particulars.

(*a*) The Balance is payable on the completion of the accounts for the year, *i.e.* in about October following the end of the tax year.

Assessors and Collectors.

The offices of Assessor and Collector of Taxes, which are distinct in law, are usually held by the same individual, who is annually appointed by and is *solely* under the authority of the Commissioners. Although one Collector is legally sufficient for a parish, two Assessors have to be appointed, the second having in practice no remuneration, nor duties apart from signing a few papers. While the acceptance of the office as Collector is optional, that of Assessor is compulsory.

The preliminary to appointment as Assessor is the issue of a precept of the Commissioners requiring the Assessors to attend a meeting of the Commissioners at a date ("not exceeding ten days after the date of the precept") to be appointed, and this *precept* must be issued before the 10th April in England, and before the 30th April in Scotland. The procedure with Collectors commences with a nomination, which takes place at the said meeting, but, as it is required by sec. 73 of the Taxes Management Act, 1880 that the nomination shall be made in the month of April, the extensive practice of holding the meeting in March in order to effect an early commencement of the Assessor's work is condemnatory, as, under such an arrangement, it could be maintained that Collectors had not been appointed in law, a point which is of particular moment in view of sub-sec. 8 of sec. 73, which is as follows :—

> If the Collector for any parish shall not have been appointed on or before the thirty-first day of May in any year, the power of appointing a collector for such parish for that and for every subsequent year shall absolutely vest in the Board, and the Board shall appoint a Collector for such parish.

In some parishes the Board of Inland Revenue now appoints Collectors.

The Assessor's duties are, in practice, mainly restricted to issue of forms of return (p. 309), as the Surveyor of Taxes performs many of the legal duties of Assessors. The Schedules A and B Assessments are made quinquennially (see p. 20), and in the years other than the "A and B year," the Surveyor

of Taxes acts as Assessor for the purposes of those Schedules (sec. 30 of Finance Act, 1896).

Assessors in Metropolis.—The Metropolis, as defined by the Valuation (Metropolis) Act, 1869, has provisions under Schedules A and B distinct from those applicable to other parts of the United Kingdom, and the Surveyor of Taxes is sole Assessor for such districts for the said Schedules (sec. 43 (2) Taxes Management Act, 1880), (see p. 20).

Death of Collector.—A vacancy occurring by the death of a Collector must be filled within forty days from the date of death, otherwise the appointment *for the year only* vests in the Board of Inland Revenue.

Security.—A Collector of Taxes has to give security for the satisfactory collection of the tax to the Commissioners by whom he was appointed, or to the Board of Inland Revenue where the latter has secured the right of appointment. The security may be in form of either—

(*a*) a guarantee policy from a Guarantee Society;

(*b*) a bond executed by an individual; or

(*c*) a deposit of deeds with the Commissioners.

The guarantee policy is most generally adopted. The District Commissioners fix the amount of the security, which however has to be satisfactory to the Board of Inland Revenue, who are thereby able, generally, successfully to oppose the appointment of a person to whom they object, by demanding security in the full amount of the collection. This course has been followed in practice. A Guarantee Society would not issue a policy in such an inflated amount.

The fixing of the amount of the guarantee should be governed by the total collection, not by the amount held by the Collector in the intervals between paying into the Bank. The latter method alone is disadvantageous, as a Collector intending to default could expedite his collection before doing so. A satisfactory basis for the guarantee is 10 per cent. of the total of the annual collection.

See *Maxwell* v. *Nathan and others* (1915), 31 T. L. R. 828.

Collectors are under banking arrangements usually specified by the Commissioners, and have to pay in to the bank at weekly or other determined intervals to a separate "Taxes" account. The following scheme is now prescribed by the Board of Inland Revenue:—

> Under sec. 100 sub-sec. 3 of the Taxes Management Act, 1880, the Board is empowered to require a collector to remit weekly or oftener, "and may prescribe regulations as regards remittances and the mode thereof, which all collectors *shall obey*."

Remuneration.—The allowances by poundage were commuted in 1891, and additional remuneration may be granted as with Clerks to Commissioners (*ante*, p. 10).

METHODS OF ASSESSMENT.

A taxpayer has the option of choosing assessment by either of the following methods:—

(*a*) In the ordinary manner by the District Commissioners;

(*b*) By the Special Commissioners;

(*c*) By the District Commissioners under a "Number or Letter."

The latter system is, in practice, almost non-existent, while assessment by Special Commissioners has no numerical comparison with the first method.

Comparison of Methods.—Each of the above methods has certain advantages and disadvantages which are materially governed by the peculiar circumstances attending a particular case of assessment. The outstanding objection to assessment by the District Commissioners is the disclosure of private financial affairs to local Commissioners, who may be rivals in business, a point which becomes of significant moment when production by the taxpayer of Balance Sheets is required. The power of the Commissioners to make this demand, and the method of overcoming the objection to production, is treated fully at pp. 297–302.

Assessment by Special Commissioners disposes of the question of divulgence of business matters, but it has been aptly described as "stepping out of the frying-pan into the fire," owing to the considerable objections to which that method of assessment is open, as the Special Commissioners are a paid Government body and there is not, as with District Commissioners, an absence of official bias. The latter body, which is composed mainly of men of considerable business standing, is more likely to adopt an equitable construction of a hard technical point than is the body of Special Commissioners who are servants of the Crown. It is injudicious to place the making and determination of an Income Tax assessment in the sole control of State officials when there is available a system devoid of official prejudice, but if a particular body of District Commissioners is notoriously inequitably disposed it would be advantageous to select Special assessment. If the latter system is adopted the District Commissioners are in total ignorance of any facts relating to the assessment.

The last method of assessment under a "Number or Letter" only differs from the first method in that the collection of the tax is placed in the hands of the Customs and Excise department, thus preventing the local collector having possession of any private particulars in connexion with an assessment so dealt with.

Principle of Administrative System.

The true scope of the Income Tax administrative system may be seen from a comparison with that pertaining in local Courts of Justice. The Commissioners are analogous to the Magistrates, the Clerk to Commissioners to the Magistrates' Clerk, the Surveyor of Taxes to counsel for the prosecution, and the taxpayer to counsel for the defence. The necessity of the Commissioners possessing extensive discretionary powers and of their being efficiently advised thereon, is evident from

the fact that the Surveyor of Taxes is an expert in Income Tax matters and is, on appeals, opposed to taxpayers who have not had the extensive experience possessed by Surveyors.

PARISHES.

The Poor Law parishes in England and Wales, excepting the City of London, are the parishes for Income Tax purposes, and the divisions, which comprise from one parish upwards, coincide generally with the old Land Tax Hundreds, but it is provided by sec. 53 of the Taxes Management Act, 1880, that where a parish is in two or more counties or divisions the whole parish shall be transferred to the division which includes that part of the parish which contains the Church.

Where a parish or part of a parish is detached from the main body of the county to which it belongs, the Board of Inland Revenue may, by sec. 5 of 5 & 6 Vict. c. 37, order as follows:—

> Any such detached parish or place, or part of a parish or place, as aforesaid, shall be added to any adjoining or other division or divisions, or be formed into one or more new division or divisions, as the said last-mentioned Commissioners (Board of Inland Revenue) shall think fit.

QUORUM.

The quorum of the Commissioners is two, except in the case of oaths which may be taken by one Commissioner (sec. 191 of Income Tax Act, 1842, and sec. 5 Taxes Management Act, 1880, "General Commissioners"),

CHAPTER II

SCHEDULES A AND B

SCHEDULE A

ASSESSMENT under Schedule A covers annual values of property and the profits of a few trading concerns having an intimate connexion with land. The specific items of assessment are referred to in Numbers 1, 2 (p. 37) and 3 (p. 39) contained in sec. 60 of the Income Tax Act, 1842.

Number 1 reads as follows:—

> The annual value of lands, tenements, hereditaments, or heritages charged under Schedule (A) shall be understood to be the rent by the year at which the same are let at **rack rent** if the amount of such rent shall have been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment, but if the same are not so let at rack rent, then at the rack rent at which the same are worth to be let by the year: which rule shall be construed to extend to all lands, tenements, and hereditaments, or heritages, capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value, except the properties mentioned in No. II. and No. III. of this Schedule.

This tax is commonly known as "landlord's property tax."

The above rule covers assessment on lands and buildings and is, therefore, of great importance, as practically all buildings come within its scope. Moreover, its effect on Licences payable in respect of Public Houses increases the advisability of securing a just assessment. These Licences amount annually to half of the annual value assessed to Inhabited House Duty, and the latter, with immaterial exceptions, follows the Schedule A figure, therefore it will be seen that if licensed premises are assessed under Schedule A on £100 (with a tax, after deduction

of repairs, of £12 9*s.* 11*d.* with the 1915–6 rate in the £ of 3*s.*) an annual *payment* of £50 has to be made in respect of Licence duties, thus every £ by which the Schedule A *assessment* is too high involves a loss, apart from the actual excessive Schedule A tax, of 10*s.*

Rack Rent.—If premises are let at a rack rent fixed by agreement within the period of seven years mentioned above, that rent is binding on the Commissioners and becomes the amount of gross assessment under Schedule A. A rack rent is the ordinary open-market annual value, the tenant paying tenant's rates and taxes and the landlord executing repairs. The definition in the instructions issued to assessors, is as follows :—

> Rack rent is the yearly rent which a tenant has agreed to pay, or which he might reasonably be expected to pay (taking one year with another) if he undertook to bear all the usual tenant's rates and taxes, and if the landlord undertook to bear the cost of repairs, insurance and any other expense necessary to maintain the property in a state to command that rent.

If, however, the rent is not a rack rent, there being some other consideration such as improvements or repairs executed by the tenant, then the assessment falls to be made by the Commissioners on what is, in their opinion, the full annual value of the premises.

A "tied" rent paid by the tenant of a Public House who is tied to the owner to purchase beers solely from the latter, is not a rack rent but a nominal payment. The discounts allowed to a tied tenant are lower than those given to a tenant who is free to purchase his beers from any brewer, and, therefore, a tied tenant requires his rent to be less than if he were able to purchase in the open market. Discounts vary considerably, but one of the largest brewers in the country allows 22½ per cent. to a "free" tenant, and 20 per cent. to a "tied" tenant. The annual value of licensed premises is also determined by reference to the "takings," and a basis of 7 per cent. of the annual amount of the latter is a guide, in practice, to the annual value.

ASSESSMENT.

Schedule A assessments are made quinquennially, although the assessments made in 1903–4 were not superseded until 1910–11.

The continuance of the assessments in the intervening years is made by an annual section in the Finance Acts such *e.g.* as sec. 10 (3) of the Finance Act, 1915, which enacts—

> The annual value of any property which has been adopted for the purpose either of income tax under Schedules A and B in the Income Tax Act, 1853, or of inhabited house duty, for the year ending on the fifth day of April, nineteen hundred and fifteen, shall be taken as the annual value of such property for the same purpose for the next subsequent year; provided that this sub-section shall not apply to the metropolis as defined by the Valuation (Metropolis) Act, 1869.

This provision was the subject of the important case of *Turner* v. *Carlton* [1909] (*a*), which decided that appeals could not be admitted in years other than the first of the quinquennial, on the grounds that the words "shall be taken" can only be legally interpreted as meaning "shall be taken conclusively." It was undoubtedly the intention of the legislature that the words should mean *shall be taken primâ facie until a cause of reduction be shown on appeal*, a condition which is supported by the legal provisions affecting the Metropolis, which allow revision of the assessment each year. The general practice is, however, to admit appeals (and therefore reductions) every year, and Surveyors of Taxes have been so instructed by the Board of Inland Revenue.

See p. 23, for APPEALS.

Metropolis.—The assessment under Schedule A in the Metropolis is governed by the Valuation (Metropolis) Act, 1869, which makes the Poor Rate values applicable for Schedule A purposes.

Definitions in the Act of gross and rateable values are as follow:—

(*a*) 1 K. B. 932; 78 L. J. K. B. 378; 100 L. T. 400; 5 Tax Cas. 395.

The term "gross value" means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation and rent-charge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent.

The term "rateable value" means the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid.

Poor Rate.—In the first year of a quinquennial, copies of the Poor Rate assessments are inserted in the Schedule A books by the Assistant Overseers (who are paid by the Board of Inland Revenue for such work) as a guide in arriving at the latter value, but the "Gross Poor Rate" is neither binding on the Commissioners as a maximum nor as a minimum. Surveyors of Taxes have argued that the Commissioners cannot go below the Gross Poor Rate, but the contention is devoid of foundation, as no comparative value is in any way conclusive for Schedule A purposes.

In *Walker* v. *Brisley* (1900) (*a*) it was held that the Gross Poor Rate was not a maximum value.

In *Gandry* v. *Dunham* (1915) (*b*) the Schedule A assessment of a public house was made in 1910–11 at £35, when the Poor Rate assessment was £30, but in 1911 the latter was increased to £45, and additional Schedule A assessments were made accordingly. An appeal was preferred in 1910–11, but was not proceeded with by the taxpayer. The additional assessment was objected to on the following grounds:—

(*a*) That the original assessment was conclusive under sec. 57 (10) of the 1880 Act (p. 25).

(*b*) That the Commissioners had been controlled by the Poor Rate.

(*c*) That the additional assessment created a double assessment as allowance was not made under Schedule D (p. 92).

(*a*) 4 Tax Cas. 254. (*b*) 32 T. L. R. 142.

The additional assessment was upheld on all grounds, and it was decided that (*a*) the original assessment had not been determined on appeal as the taxpayer withdrew the appeal; (*b*) the Commissioners had not been *bound* by the Poor Rate but had only considered it as a comparative value, and (*c*) that the question of the Schedule D assessment was not before the Court. There was evidence before the Commissioners that the open market value as a "free" house was £45.

Schedule A books in rural districts comprise several small parishes, and the work of the Assistant Overseers in such cases is often bordering on illegibility, therefore the better practice in these instances is to have the Poor Rates copied into the Schedule A books by the Assessor, who can receive the remuneration otherwise paid to Assistant Overseers. The production of the necessary parochial books is provided for by the following section:—

> The several commissioners, inspectors, surveyors, and assessors acting respectively in the execution of this Act, or any person authorized by them respectively, shall have liberty, from time to time, and at all seasonable times, to inspect and take copies of or extracts from any book kept by any parish officer or other person of or concerning the rates made for the relief of the poor, or any other public taxes, rates or assessments, in any place within the limits for which they shall be appointed, **without the payment of any fee whatever**; and if any person in whose custody or power any of the said books shall be shall refuse or neglect to permit the said inspection, or the copies or extracts to be made as aforesaid, **or to attend the said Commissioners** with any such book when required so to do in pursuance of this Act, such person so offending shall forfeit any sum not exceeding twenty pounds nor less than five pounds (sec. 76 of the Income Tax Act, 1842).

The copy may either be made at the offices of the Assistant Overseer, or the Poor Rate books may be required to be deposited with the Commissioners. If objection to the latter method is raised by the Assistant Overseer, he may be required to attend the Commissioners with the book, and he then has the alternative of remaining while the copy is made,

or leaving the book in the custody of the Commissioners and the Assessor.

The power to require production of "any contributions under the management of the kirk sessions" is enacted by sec. 39 of the Taxes Management Act, 1880.

Appeal.—It is generally necessary in the case of Schedule A appeals that any appeal against the Poor Rate assessment should be first determined, as the Commissioners, although not bound by the Poor Rate value, do not, as a rule, go below such value.

The following actual example of a Public House appeal illustrates this point and also shows the evidence required:—

The gross Schedule A assessment was £80, and the Gross Poor Rate assessment £62 10*s*. The figures supplied were as follow:—

	Gross Takings.	Net Payments to Brewers.
	£	£
Year to 30th March, 1909	832	587
" " " " 1910	775	552
" " " " 1911	668	461
	3)2275	3)1600
	758	533

The average takings of £758 give, at 7 per cent., an approximate annual value of £53 and, moreover, the trade is obviously falling consistently. The Commissioners, however, would not reduce the Schedule A assessment of £80 to a lower figure than the Poor Rate of £62 10*s*. It should, however, be noted that the Gross Poor Rate is not binding and this fact is not generally before the Commissioners.

Return.—In the first year of a quinquennial, returns of rent payable are required of tenants, except in small property under £10 annual value.

VALUATION BY "PERSON OF SKILL."

The most important provision applicable to Schedule A is that enacted by (*a*) sec. 81 of the Income Tax Act, 1842,

and (*b*) sec. 47 of the Income Tax Act, 1853, which, in effect, substitute assessment by an independent practising valuer for biassed official assessment. *This provision does not refer to the Metropolis.* Valuations are discouraged by Surveyors of Taxes, as they generally result unfavourably to the Crown, a course the probability of which is obvious from the fact that the valuer is in no way interested in the amount of the assessment, and, moreover, he is in intimate connexion with the market values of property. This provision is of great value in the case of licensed property (see *ante*, p. 18).

(*a*) Section 81 of the 1842 Act:

> If **upon appeal** any dispute shall arise touching the annual value of any lands, tenements, hereditaments, or heritages, and the Commissioners shall deem it necessary that a valuation thereof should be taken and made by any person of skill, it shall be lawful for them to direct the appellant to cause such valuation to be made by any person **to be named by the said Commissioners,** the costs and charges whereof shall abide the final determination of the said Commissioners; and it shall be lawful for them to make an assessment according to such valuation, and to require the same to be verified on the oath of the person making the same; but in case the appellant shall not proceed with effect to cause such valuation to be made as aforesaid, the said Commissioners shall make an assessment according to the best of their judgment; provided always, that it shall be competent to the said Commissioners, in every such case where the valuation so made shall exceed the value put upon the same lands, tenements, hereditaments, or heritages by the appellant to direct the costs and charges attending the same to be paid by him; **but if they shall be of opinion that such costs and charges have not been incurred through any default of the said appellant,** they shall direct the same to be paid by the collector of the parish or place.

(*b*) Section 47 of the 1853 Act:

> Whereas by the eighty-first section of the said Act of the fifth and sixth years of Her Majesty, chapter thirty-five, if upon appeal any dispute shall arise touching the annual value of any lands, tenements, or hereditaments, the Commissioners are authorized, if they deem it necessary, to direct that a valuation thereof shall be taken and made by a person of skill to be named by the said Commissioners: It shall be lawful for the appellant, as well as the said Commissioners, upon any

such appeal, to require that such valuation as aforesaid shall be made; and the said Commissioners, on being required so to do by the appellant, as well as in cases where they may deem it necessary shall name a person of skill to make such valuation; and upon such valuation being verified on the oath of the person making the same, the assessment shall be made according thereto.

(1) A valuation can only be demanded "upon appeal," and it is necessary to note that it is successfully contended by Surveyors of Taxes, on such demand being made immediately *after* the determination of the Appeal by the Commissioners, that the appellant's demand fails owing to sec. 57 (10) of the Taxes Management Act, 1880, which enacts:—

Appeals once determined by the General Commissioners, or by the major part of them present on the day appointed for the hearing of the appeals, shall be final; and neither the determination of the Commissioners nor the assessment then and there made thereupon shall be altered at any subsequent meeting, or at any other time or place, except by order of the High Court when a case has been required as provided by this Act.

The Surveyor contends, under the above provision, that the demand for a valuation must be made *before* the decision of the Commissioners is given, a course which is highly unreasonable, as an appellant cannot definitely know that the Commissioners' decision will be unfavourable until such decision is delivered. The position is made more inequitable by the fact that the Surveyor does not acquaint the appellant with his view of the question until *after* the Commissioners have determined the amount of the assessment. It is necessary, therefore, that, if an appellant sees that the Commissioners are not favourably disposed towards his claim, he should, before the assessment is determined, inform the Commissioners of his desire for a valuation to be made.

(2) The procedure is for the Commissioners to name the valuer to the appellant (see form of precept, *post*, p. 26) leaving the appellant to transmit the precept to the valuer, in default of which the Commissioners' assessment stands.

The valuer attends a subsequent meeting of the Commissioners and makes oath before a Commissioner as to the correctness of the valuation.

(3) The appellant is asked by the Surveyor to place a value on the property, and a low value should not be given as the Surveyor's object is to obtain a low figure with a view to the costs of the valuation being borne by the appellant. This anomalous condition results, in practice, in the appellant being mulct in costs when the valuer's figure is higher than that given by the appellant *but less than the assessment*. As the value stated by the appellant cannot influence the determination of the valuer, who is in ignorance of such value, understatement should be rigidly avoided.

(4) As sec. 47 of the Income Tax Act, 1853, which gives the appellant the same power of requiring a valuation as that previously possessed exclusively by the Commissioners in sec. 81, contains no stipulation as to costs, it follows that the provisions on the matter in sec. 81 are applicable to the circumstances dealt with by sec. 47. The words "any default of the said appellant" are sufficiently wide to allow the Commissioners not to order the appellant to pay the costs when the valuer's figure is *not* less than the assessment, provided that the appellant's action in demanding the particular valuation is not vexatious and unnecessary. When costs are awarded to the appellant they are, in practice, paid by the Board of Inland Revenue and not by the collector of the parish.

(5) The value ascertained by the valuer is binding on the Commissioners.

The following precept is suitable for use in granting a valuation:—

INCOME TAX SCHEDULE A.

DIVISION OF

COUNTY OF

WHEREAS A. B. appealed on the day of 191 , against an assessment under Schedule A of the Income Tax

Acts made in respect of the premises situate in the said A. B. requested the Commissioners of Income Tax to grant a valuation in accordance with sec. 81 of the Income Tax Act, 1842 and sec. 47 of the Income Tax Act, 1853.

Now we the undersigned, being the Commissioners who heard the said appeal, hereby give notice to the said A. B. that by virtue of the said Acts we name C. D. of as the person of skill to make the said valuation.

And we further direct that the said C. D. appears before us on the day of 191 , at a.m. at , to deliver his valuation and verify it on oath.

DATED the day of 191 .

Repairs and other Deductions.—The gross value of a Schedule A assessment is reduced to a net value, for the purpose of calculation of duty, by reduction in respect of repairs executed by the owner. Deduction is calculated on an amount equal to the gross Schedule A assessment plus the Tithe Rent Charge (see p. 28).

Deduction in respect of repairs is provided by sec. 35 of the Finance Act, 1894, which enacts :—

> (*a*) In the case of an assessment on lands inclusive of the farmhouse and other buildings (if any), the amount of the assessment shall, for the purposes of collection, be reduced by a sum equal to one-eighth part thereof ; and
>
> (*b*) In the case of an assessment upon any house or building (except a farmhouse or building included with lands in assessment), the amount of the assessment shall, for the purposes of collection, be reduced—
>
> (i.) Where the owner is occupier or assessable as landlord, or where a tenant is occupier and the landlord undertook to bear the cost of repairs, by a sum equal to one-sixth part of that amount ; and
>
> (ii.) Where a tenant is occupier and undertook to bear the cost of repairs, by such a sum not exceeding one-sixth part of that amount, as may be necessary to reduce it to the amount of rent payable by him.

An extension up to the actual cost in the case of both (*a*) and (*b*) is granted (by repayment) by sec. 69 of the Finance (1909–1910) Act, 1910, as amended by sec. 8 of the Finance Act, 1914, on the owner proving that the cost to him of maintenance, repairs, insurance, and management has

exceeded, on the average of the five preceding years, the respective allowances of one-eighth or one-sixth. The "year" is that ending 31st March, or such other date desired by the owner, and approved by the Surveyor of Taxes.

Maintenance is defined as including replacement of farm-houses, farm buildings, cottages, fences, and other works where the replacement is necessary to maintain the existing rent.

The total cost of maintenance, repairs, insurance and management on any land managed as one estate, or of any houses on any such land shall, for the purpose of the extension, be compared with the total annual value of the land or houses.

The above extension is limited in its application as it refers to all land (inclusive of farm-houses, and buildings) which is subject to deduction of one-eighth, but only to houses when the gross Schedule A assessment does not exceed £12.

With market gardens one-eighth is allowed for land and one-sixth for glass-houses.

Claims for repayment under sec. 69 may be made in respect of the current year and the three preceding years.

Deductions are allowed in respect of the following, which must be *claimed* :—

Land Tax payable in respect of the property assessed.

Drainage Rate, etc.—The amount charged by a public rate or assessment in respect of draining, fencing or embanking.

Sea Walls and Embankments.—"The amount expended by the owner in making or repairing sea walls or other embankments necessary for the preservation or protection of such lands against the encroachment or overflowing of the sea or any tidal river, although the sums expended may not have been charged on such lands by any public rate or assessment."

Tithe Rent Charge.—The amount of the Tithe Rent Charge is deducted in arriving at the Schedule A assessment on the property in respect of which it is charged, and it is assessed separately on the tithe owner in one sum for the

parish, less the deduction for costs of collection (see *Stevens* v. *Bishop*, [1888], C.A.) (*a*) and also for rates "paid in the year in which the assessment shall be made."

Rates.—In the case of property let at rentals which include rates, the latter are deducted in ascertaining the Schedule A assessment. Scotland is additionally provided for by sec. 1 of the Taxes Act, 1856, as follows :—

> Where it shall be made to appear to the satisfaction of the Commissioners of Inland Revenue that the landlord of lands in Scotland is by law charged with any public rates, taxes or assessments, which in England are by law a charge on the occupiers of lands, or that such landlord is by law charged with any public rates or taxes or other public burdens the like whereof are not chargeable on lands in England, the said Commissioners shall cause such relief to be given to the said landlords in Scotland as shall be just and reasonable in regard to the charge of the income tax on them in respect of an annual value exceeding by the amounts of such rates, taxes, assessments, and public burdens the charge of the said tax on landlords in England ; and such relief shall be given either by abatement from the assessment or by repayment of the tax.

Flood.—Allowance may be claimed in respect of loss through flood and tempest.

Sporting Rights.

Schedules A and B assessments are in practice made on the full annual value including the value of sporting rights, except as follows :—

(1) If the land is let to one person, and the rights of sporting thereover are let to another person, the land should be assessed under Schedules A and B upon the occupier, and the sporting rights under Schedule A only, under No. II. Rule 6 (p. 38), upon the owner on the rent.

(2) If the land is *let*, and the sporting rights attached thereto are not let, no assessment is to be made in respect of the sporting rights, even though the owner shoots over the lands.

(*a*) 20 Q. B. D. 442 ; 57 L. J. Q. B. 283 ; 58 L. T. 669 ; 52 J. P. 548 ; 36 W. R. 421 ; 2 Tax Cas. 249.

The practice is not, however, supportable in law.

The assessment is laid under Rule 6 of No. II. of Schedule A, which charges "all other profits arising from lands . . . not in the actual possession or occupation of the party to be charged . . . on a fair and just average of such number of years as the said Commissioners shall . . . judge proper . . . to be charged on the receivers of such profits."

The charging provision to No. II. states that "The annual value of all the properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year, of the *profits received therefrom* within the respective times herein limited." The basis of assessment should, therefore, be *profits* not *rent*.

In *Duke of Norfolk* v. *Lamarque* (1890), it was held that "profits in No. II. does not mean profits in the sense of the net profits in a mercantile business," *but the Court had not before them the fact that the charging provision of No II. is exactly that of No. III.*, which latter No. covers, *e.g.*, mines, and the definition of "profits received therefrom" in No. III. obviously applies to *net profits*. Moreover, if gross rent were intended to be the basis why should the average principle be incorporated? In the above case, moreover, it was held that the deduction sought, viz. cost of collection of manorial dues, was inadmissible, being made *out* of the profits, not in arriving at profits, whereas the upkeep of shootings is a necessary expense to obtain the income therefrom. Manorial dues are assessable under Rule 4 of No. II., and Baron Pollock presented the proposition "is it a deduction which is to be made before you can arrive at the amount which is to be returned by the person who is taxed?"

In *Stevens* v. *Bishop* (1888), the costs of collection of tithe rent charge were allowed as being *necessary* expenses and expenses which a purchaser would have to allow for.

In interpreting the charging provision to No. III. Lord Penzance, in *Coltness Iron Co.* v. *Black* (1881), held that the words "'profits received therefrom' in this connection mean,

I think, the entire profits derived from the *mine*, deducting the cost of working it, but not deducting the cost of *making* it." These words are strictly applicable to shootings, with the substitution of "shootings" for "mines" and "acquiring" for "making."

The cases of *Middleton* v. *I. R.* (1876) (p. 44) and *Revell* v. *Scott* (1895) (p. 44) are irrelevant as the assessments were there made under No. I. on "rack rent."

Moreover, "Fishings" are charged under No. III., and as it cannot be denied that *net* profits must be the basis for "Fishings," which are included in the same Rule as Gasworks and Waterworks, it follows that "shootings" (which are strictly analogous to fishings) should be assessed on *net* profit. Rule 6 of No. II. charges "other profits from lands" and does not specify shootings, therefore it could be contended that shootings should be assessed under the same rule as fishings within the sweeping words in such rule "and other concerns of the like nature."

Woodlands and Lakes are also assessable.

Machinery.

The rating law of machinery is adopted in Income Tax practice and it provides that "whatever is fixed to the realty, so as to pass as landlord's fixtures in a demise of the premises, is to be included for the purposes of ascertaining its rateable value."

Sewers and Slaughterhouses, Railway Property.

The assessability of sewers and slaughterhouses is dealt with at p. 294, and railway property at p. 31.

Persons Assessed.

Occupier.—Schedule A assessments are, apart from the exceptions hereafter, made on the occupier, who, if a tenant, is entitled to deduct the tax on paying his rent, but he is restricted to the deduction of a sum not exceeding the tax paid. Thus, if premises are rented at £100 per annum and

the Schedule A assessment is on £100 gross and £83 6s. net, *i.e.* after deduction of one-sixth for repairs, the tenant could deduct the whole of the tax, but if he had a beneficial occupation and, with the same assessment, paid a rent of £50, he could not deduct tax exceeding that on £50 and he would have to bear the balance himself (but see p. 33).

A house which is owned by the Government and occupied by an official by virtue of his office or otherwise (except apartments in the Royal Palace) is assessable under Schedule A on the occupier.

Landlord.—Rule 3 of No. IV. of Schedule A, sec. 60 of Income Tax Act, 1842, enacts :—

> For any dwelling house in the occupation of a tenant which with buildings or offices belonging thereto, and the land occupied therewith, shall be under the annual value of ten pounds, and for all lands and tenements let to any tenant for a less period than one year, the assessment thereupon shall be made on the landlord, but so as not to impeach the remedy of recovery of the duty from the occupier, in default of payment by the landlord.

Houses let in different apartments or tenements and occupied by two or more persons severally are assessed as one house on the landlord, but this does not preclude the tax being levied on the occupiers, on the owners defaulting in payment.

The landlord may himself elect to be assessed under Schedule A on giving notice to the Clerk to Commissioners before 31st July in any year, but this does not prejudice the right of the Revenue, if necessary, to collect the tax from the tenants, who may deduct the tax thus paid from *any* subsequent payment of rent.

Railway Companies are not charged on their property under Number 1 of Schedule A (see p. 18) except for property rented by such companies, let to tenants, hotels, and refreshment rooms, whether in the occupation of tenants or not, and station masters' houses or rooms at stations if a rent is paid for them.

Deductions of Tax.

The occupier has a statutory right to deduct tax from his *next* payment of rent made after paying the tax, which right is also limited to the amount of the tax actually paid and which accrued due during the period for which the rent is paid. No deduction can legally be made until the tax has been paid, but in practice deduction is made from each payment of rent, such *e.g.* as quarterly. (Sec. 40 of the Income Tax Act, 1853; sec. 15 of the Revenue (No. 1) Act, 1864; and Rule 9 to No. IV. of Schedule A.)

Since the Finance Act, 1894, introduced an allowance for repairs the question of deduction has become somewhat complicated. Prior to that Act a tenant having a beneficial occupation deducted tax on the amount of his rent and bore the balance himself. Thus if the Schedule A assessment was £100 and the rent £80 the tenant bore tax on £20 and the owner on £80 and in practice this method still pertains although it produces considerable inequity. The Finance Act, 1894, had the obvious intention of relieving the landlord who had to execute repairs, and where the tenant has no beneficial occupation the landlord receives this intended benefit, as, *e.g.* with a rental of £100, a gross Schedule A assessment of £100, and a net Schedule A assessment (after deducting one-sixth for repairs) of £83 6*s.*, the tenant on paying his rent deducts and the landlord bears, tax on £83 6*s.*, but, assuming the same assessment and a beneficial occupation with a rent of £80, tax is in practice deducted on £80, thus giving the landlord no allowance for repairs. If the property is worth £100 per annum the landlord is, from an equitable point of view, entitled to the allowance of one-sixth, but the 1894 Act did not contain a provision to authorize this. Rule 9 of No. IV. of Schedule A in the 1842 Act allows deduction on the rent payable, "all sums allowed by the Commissioners being first deducted," but the repairs enacted by the subsequent Act of 1894 were obviously not in the contemplation of Rule 9.

Compensation Levy.—Under sec. 3 of the Licensing Act, 1904, a licence holder is entitled to deduct from his rent a proportion of the amount paid by him as Compensation Levy. The deduction for Schedule A tax may, however, be made in respect of the whole rent: *Hancock* v. *Gillard*, [1907] (*a*).

Sublets.—Where property is not held from the actual owner direct, the tenant in possession deducts the full tax, or tax on the amount of his rent if this is smaller, when paying his rent to the lessee, who, when paying his rent (which would probably be smaller than the rent he receives) deducts from the landlord on the rent he pays to the latter.

Deduction from next Payment of Rent.—Section 14 of the Revenue Act, 1911, enacts:—

> (1) Where in any income tax year any half-yearly or quarterly payments have been made on account of any dividend, interest, or other annual profits or gains, previously to the passing of the Act imposing the tax for that year, and income tax has not been charged thereon or deducted therefrom, or has not been charged thereon, or deducted therefrom, at the rate ultimately charged for the said year, the amount not so charged or deducted shall be charged under Schedule D in respect of those payments as profits or gains not charged by virtue of any other Schedule, in accordance with the provisions contained in the sixth case of Schedule D in section one hundred of the Income Tax Act, 1842, and the agents entrusted with the payment of the dividends, interest, or other annual profits or gains shall furnish a list containing the names and addresses of the persons to whom payments have been made, and the amount of those payments, to the Commissioners of Inland Revenue, upon a requisition made by the Commissioners in that behalf.
>
> (2) Any person liable to pay any rent, interest or annuity, or to make any other annual payment, shall be authorized to make any deduction on account of income tax for any income tax year which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made on the occasion of the next payment of the rent, interest, or annuity, or making of the other annual payment after the passing of the

(*a*) 1 K. B. 47; 76 L. J. K. B. 20; 95 L. T. 680; 71 J. P. 9; 23 T. L. R. 12.

Act so imposing the tax, in addition to any other deduction which he may be by law authorized to make, and shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could have originally have been made if the Act imposing income tax for the year had been in force.

(3) In this section the expression "income tax year" means the year beginning the sixth day of April.

The above section does not permit an unqualified deduction of tax, irrespective of when the tax was paid by the tenant. It does not supersede Rule 9 to No. IV. of Schedule A, which provides that the deduction shall be made from the "first payment" made *after payment* of the tax. The section has in view solely the circumstances arising on rent being paid in the interval between the commencement of the tax year and the passing of the annual Finance Act.

The question also arose in *re Sturmey Motors, Ltd.*, [1913] (*f*). Certain premises were demised in 1907 to a company, and the latter did not pay any rent, but paid the Schedule A tax. In 1911 a Receiver was appointed. The lessor subsequently threatened to distrain for the rent in arrear, but the Receiver contracted to pay an occupation rent, and also the arrears, out of a particular fund. He paid a year's Schedule A tax, but did not deduct anything from the next payment of rent. It was held that the joint effect of Rule 9 and sec. 40 of the 1853 Act was to treat the payment of tax as a *pro tanto* payment of rent, and, further, that the Receiver was entitled to deduct the payments of tax made by the Company and himself from any future payments of rent to be made by him under his undertaking.

This case, however, is not conclusive on the question, as it was not that of an ordinary lessor and lessee, and it cannot be taken that the specific words of Rule 9, "which deduction shall be made out of the first payment thereafter to be made on account of rent," are rendered inoperative. Moreover, in

(*f*) 1 Ch. 16; 82 L. J. Ch. 68; 107 L. T. 523; 57 Sol. Jo. 44.

Cumming v. *Bedborough* (1846) (*g*), it was specifically decided that tax paid by a tenant cannot be deducted if the tenant omits to deduct from his next payment of rent.

Sec. 45 of the 1853 Act provides that, in the case of payment of "any rent, or any yearly interest of money, or any annuity or other annual payment, either as a charge on any property or as a personal debt or obligation by virtue of any contract," tax may be deducted at the applicable rates "for every 20*s.* of such payment," and a penalty of £50 attaches for refusal to allow deduction. As regards rent of property deduction is restricted to the *tax actually paid* by the tenant. In *Shrewsbury* v. *Shrewsbury* (1906), under a separation agreement an annual allowance was made clear of all deductions, and it was held that Income Tax could be deducted from payments, but not in respect of past payments from which deduction was not made although, on payment of arrears of allowance, tax could be deducted on those arrears.

See pp. 380–390.

Scotland.—Under sec. 34 of the Finance (No. 2) Act, 1915, deduction of tax under Schedule A on lands and heritages in Scotland made from "any rent, interest, or payment due for the period ending on 15th May, shall be made at the rate of tax in force at the commencement of that period." Ordinary rent, etc., would carry deduction at the rates in force during the period of accrual (see p. 387).

Contracting-Out.—An agreement as to the tenant not being allowed to deduct tax is illegal by sec. 73 of the Income Tax Act, 1842.

(See also pp. 380–390.)

Voids.

An allowance is made for Voids by sec. 70 of the Income Tax Act, 1842, and claims have been admitted for repayment in respect thereof for the preceding three years.

In the case of cottage property, the assessment under

(*g*) 15 M. & W. 438.

Schedule A may, in practice, be ignored, and tax paid on the actual recoverable rents received in the calendar year less rates, and a further deduction of one-sixth for repairs.

EXEMPTION.

For exemptions from Schedule A, see p. 392.

NUMBER II. OF SCHEDULE A.

The following subject-matters of assessment are charged under Number II. :—

Rule 1.—Tithes in kind on average amount of three preceding years.

Rule 2.—Dues and money payments in right of the Church or by Endowment, or in lieu of tithes (not being tithes arising from lands), and teinds arising in Scotland, on the same average.

Rule 3.—Of all tithes arising from lands, if compounded for, and of all rents and other money payments in lieu of tithes arising from lands (except rent-charges confirmed under the Act passed for the commutation of tithes), on the amount of such composition, rent or payment for one year preceding after deducting parochial rates.

For the assessment of Tithe Rent-charge, see p. 28.

Rule 4.—Manors and other royalties, including all dues and other services, or other casual profits (not being rents or other annual payments reserved or charged), on an average of the seven preceding years, to be charged on the lord of such manor or royalty or person renting the same. Fines on admission to copyhold are charged under this rule.

In *Duke of Norfolk* v. *Lamarque* (1890) (*h*), it was decided that a deduction for expenses of collection of manorial dues could not be made by the Lord of the Manor.

Rule 5.—All fines received in consideration of any demise of lands or tenements (not being parcel of a manor or royalty

(*h*) 24 Q. B. D. 485; 54 J. P. 327; 59 L. J. Q. B. 119; 62 L. T. 153; 38 W. R. 382; 2 Tax Cas. 579.

demisable by the custom thereof) on the amount so received within the year preceding by or on account of the party; provided that in case the party chargeable shall prove, to the satisfaction of the Commissioners for general purposes in the district, that such fines, or any part thereof, have been applied as productive capital, on which a profit has arisen, or will arise otherwise chargeable under this Act, for the year in which the assessment shall be made, it shall be lawful for the said Commissioners to discharge the amount so applied from the profits liable to assessment under this rule.

(*a*) In *Lord Mostyn* v. *London*, [1895] (*i*) it was decided that fines on renewal of leases, placed on deposit at a bank (on which deposit interest was paid) had not been applied as productive capital within the meaning of Rule 5. *Wright, J.*, stated that "I think those words, read fairly according to the ordinary use of language, imply something more than a mere temporary deposit at a bank."

Rule 6.—This is a sweeping clause on "all other profits arising from lands, tenements, hereditaments, or heritages, not in the actual *possession or occupation* of the party to be charged and not before enumerated, on a fair and just average of such number of years as the said Commissioners shall, on the statement of the party to be charged, judge proper . . . to be charged on the receivers of such profits, or the persons entitled thereto."

Minerals.—In *Hill* v. *Gregory*, [1912] (*k*) the appellant leased the minerals under an area of land to the Warwickshire Coal Co., Ltd., and the surface to an ordinary farming tenant. The Coal Company were to pay a minimum rent of £60 per annum for the first four years of the lease. The minerals were not worked or entered upon but boreholes had been put down by the Company on neighbouring property. The Company deducted tax when paying the minimum rent, but

(*i*) 1 Q. B. 170; 59 J. P. 390; 64 L. J. Q. B. 106; 71 L. T. 760; 43 W. R. 330; 15 R. 49; 3 Tax Cas. 294.
(*k*) 2 K. B. 61; 81 L. J. K. B. 730; 106 L. T. 603; 6 Tax Cas. 39.

did not pay over the tax to the Crown on the contention that the rent was paid wholly out of income already taxed on its own freehold lands under Schedule A. It was held that the minimum rent was assessable under Rule 6.

NUMBER III.

This number, which deals with mines, waterworks and other trading concerns, is dealt with in Chapter III., on Schedule D, the rules of which are, with certain exceptions, applicable to No. III. This No. in its separation from Schedule D is a survival of the antiquated provisions of the Income Tax Act, 1806, re-enacted in the 1842 Act.

SCHEDULE B.

The Tax under Schedule B is that which covers farmers and other *occupiers* of land. It is levied on the occupier and is imposed as an estimated amount of the profits derived from the occupation of the land, with provisions for the taxpayer to correct such estimate in the event of the actual profits falling short of the amount assessed but with no provision authorizing the Crown to exceed the estimated amount assessed, should it be known that the profits exceed that amount. The taxpayer is also possessed of an option of requiring the assessment on the profits derived from the land, to be made under the rules of Schedule D, if he occupies the land for the purpose of husbandry only and makes his request to the Surveyor of Taxes within two calendar months after the commencement of the year of assessment. The rule for assessment under Schedule B is contained in No. VII. of sec. 63 of the 1842 Act and reads as follows:—

> The duties last before mentioned shall be charged in addition to the duties to be charged under Schedule (A) on all the properties in this Act directed to be charged to the said duties, according to the general rule in Number I. Schedule (A) before mentioned, on the full amount of the annual value thereof estimated as by this Act is directed (except a dwelling-house, and the domestic offices thereunto belonging, and which

dwelling-house and offices shall not be occupied, by virtue of one and the same demise, with a farm of lands for the purpose of farming such lands, or with a farm of tithes for the purpose of farming the same; and except warehouses or other buildings occupied for the purpose of carrying on a trade or profession).

The Schedule B Tax is not assessed on buildings except farm-houses let with farms, but where the owner is also occupier the farm-house value is excluded. Moreover, labourers' cottages held with farms or land are also excluded.

It was provided by sec. 26 of the Finance Act, 1896, that the Schedule B assessment should be made on one-third of the full assessment. The latter follows the *gross* Schedule A assessment except that the deduction made for tithe (see p. 28) in arriving at the Schedule A assessment is not made for the purposes of Schedule B. The Finance Act (No 2), 1915, provides by sec. 21, however, that for 1915–16 and subsequent years, the Schedule B assessment shall be taken as the full annual value, and secs. 26 and 27 of the Finance Act, 1896, are to be read accordingly.

Under sec. 18 of the Customs and Inland Revenue Act, 1887, an occupier of lands for the purposes of husbandry only may claim to be assessed under Schedule D, as in the case of an ordinary trade, and the basis of assessment is the average profits of the three years preceding the year of assessment. The claim must, for 1915–16, be made before 7th February, 1916, but for other years the 1887 Act stipulates 7th June.

Ireland.—When either of the following factors is less than the Poor Law valuation, sec. 22 (1) of the Finance (No. 2) Act, 1915, provides that such factor shall determine the assessment under Schedule B.

1. Judicial rent under the Land Law (Ireland) Acts, or any of them.

2. Annual interest payable to Irish Land Commission in lieu of rent under the Land Law (Ireland) Acts or any of them.

3. Purchase annuity payable under the Land Purchase (Ireland) Acts, or any of them.

Excessive Assessment.—It is provided, by sec. 27, after enacting that the Schedule B assessment shall be taken as of the 1896 Act, the full annual value, that :—

> Except that if any person occupying, either as owner or otherwise, any lands for the purpose of husbandry only shows **at the end of any year** (*l*), to the satisfaction of the general commissioners of income tax, that his profits and gains arising from the occupation of such lands **during the year** (*m*) fell short of one-third of the said annual value thereof, the income arising from the occupation shall be taken at the **actual amount** of such profits and gains, and if the whole of the income tax has been paid, the amount overpaid shall be certified and repaid.

This section does not apply to lands held as amenities to a residence.

For claims in respect of losses, see sec. 23 of Customs and Inland Revenue Act, 1890, p. 359, which allows repayment of tax in respect of the amount of loss if the person assessed has paid tax on any income.

The following form of accounts should be rendered on a claim being made. A printed form may be obtained from the Surveyor of Taxes :—

OFFICE OF THE SURVEYOR OF TAXES.

19 .

SIR,

With reference to your notice of Appeal for relief from the Income Tax charged under Schedule B in respect of the Lands occupied by you for the purposes of Husbandry, I have to request that you will be good enough to furnish the particulars required by this form, so far as it is applicable to your case, and return it to me **within ten days from this date.**

Particulars of the Lands to which your appeal relates should be entered in the Schedule on the back hereof.

I am, Sir,

Your obedient Servant,

Surveyor of Taxes.

(*l*) The words " end of any year " are interpreted liberally in practice, and a claim will be admitted if made within twelve months of the end of the year for which the claim is made.

(*m*) " During the year " refers to the trading year, thus if accounts are made up to 31st December in each year, such accounts would be accepted by the Commissioners. In an actual example where the accounts were made up to the said date, a claim made in February, 1914, was allowed in respect of the years 1912–13 and 1913–14.

INCOME TAX.

Statement of Payments and Receipts in respect of Lands in my occupation for the purposes of Husbandry (particulars of which are entered at the back of this form) for the year ending 19 .

PAYMENTS :—

(*a*) Value of *Stock* (live and dead) and *produce* at beginning of year.

Live stock bought.

Corn and Seeds bought for seed.

Feeding Stuffs, Oil Cake, and Manure bought.

Rent [plus Tithe, if any, paid by Tenant in addition to Rent].

The amount of (*a*) the *Schedule A assessment* (*i.e.* the *net value* assessed, not the duty paid), and (*b*) Tithe paid, if the Occupier is also the owner (*a*) (*b*).

Rates, Taxes (excluding Income Tax), and Insurance of Farm Stock.

Labour on the Farm.

(*b*) Tradesmen's accounts for Goods supplied or work done *upon the Farm.*

(*b*) Sundries.

RECEIPTS :—

Live Stock and Wool sold.

Corn and Seeds sold.

Dairy Produce and Poultry sold.

Other Produce, including Hay, Straw, or Roots sold.

Labour, Stock, Implements, etc., hired out.

Taking in Sheep or Cattle to graze.

(*a*) Value of *Stock* (live and dead) and *produce* at end of year.

OTHER RECEIPTS, viz. :—

Value of Farm Produce used by Household.

Signature.
Address.
Date.

FORM OF DECLARATION TO BE FILLED UP AND SIGNED

when the value of the Stock at the beginning and end of the year cannot be shown in the above Account.

I solemnly and sincerely declare that the amount of live and dead *stock* and *produce* (*a*) upon my holding on (*c*) the

(*a*) This is value of *Stock* and *produce* only—not including "*tillages*," &c.

(*b*) Disbursements or Expenses for the maintenance of the Occupier of the Lands or of his family are not to be included.

(*c*) Name the day to which accounts are made up.

day of 19 , did not differ materially for the purposes of this account from the average amount in hand on the corresponding day of previous years [(*d*) except in the particulars stated below, which are true to the best of my knowledge and belief].

Particulars of difference referred to above.

Description of Stock and produce.
Increase, £
Decrease, £

Signature,

Date, 19 .

PARTICULARS OF THE LANDS TO WHICH THE APPEAL RELATES.

Parish.
Occupier.
Owner.
Name or situation of the Farm.
Acreage—Arable, Pasture.
Full amount of the Rent payable (including Tithe).
Amount of Rent remitted by the Landlord for the year to which the Appeal relates.
Annual Value charged under Schedule A where the Occupier is also the Owner.

Appellant.

Nurseries and Market Gardens are to be assessed under the rules of Schedule D (*i.e.* on the profits made), but the amount thus arrived at is to be inserted under Schedule B.

EARNED INCOME, &C.

The Schedule B tax being on *profits* is subject to the provisions applicable to "earned" income giving assessment at a lower rate in the £ than with Schedule A, and also to "abatements," "exemption," etc. (See p. 332.)

OMISSIONS.

Additional assessments may, under sec. 23 of the Finance Act, 1907, be made on lands under-assessed or omitted from assessment, in respect of the current tax year and the three preceding years.

(*d*) Strike out the words in brackets if the amount is the average one.

SPORTING RIGHTS.

Assessments under Schedule B on all lands to which any rights of sporting are attached, should be made on the full annual value inclusive of such sporting rights except in the following cases :—

(1) If the land is let to one person, and the rights of sporting thereover are let to another person, the land should be assessed under Schedules A and B upon the occupier, and the sporting rights under Schedule A only upon the owner.

(2) If the land is let, and the sporting rights attached thereto are not let, no assessment is to be made in respect of the sporting rights.

See *Middleton* v. *I. R.* (1876) (*r*), where it was held that the rent paid for deer shooting should be included in the Schedule B assessment on the occupier.

In *Recell* v. *Scott* (1895) (*s*), it was decided that the Schedule B assessment should cover shooting and fishing rights.

WOODLANDS AND LAKES.

Woodlands and lakes, whether in the occupation of the owner or of a tenant, are chargeable, like other lands, under Schedule B on their full annual value in the existing conditions, but sec. 22 (4) of the Finance (No. 2) Act, 1915, provides that, on proof that the occupier manages the woodlands "on a commercial basis, and with a view to the realisation of profits," he may elect to be charged under Schedule D on the terms specified by sec. 18 of the 1887 Act (p. 40), subject to the following restrictions :—

(1) All woodlands in the same estate shall be included.

(2) The assessment under Schedule D shall attach for all subsequent years so long as the woodlands are in the same occupation.

(*r*) 13 Sc. L. R. 378; 3 R. 599; 1 Tax Cas. 109.
(*s*) 32 Sc. L. R. 585; 22 R. 772; 3 Tax Cas. 403.

CHAPTER III

SCHEDULE D

Schedule D is the main Schedule of the Income Tax and covers *inter alia* assessment on profits of trade. Its provisions with regard to deductible expenses (p. 79) form the most controversial part of the incidence of the Income Tax, and the law pertaining thereto is particularly inequitable, but the practice alleviates much of such inequity. Profits for Income Tax purposes are not, in practice, synonymous with profits as understood in an ordinary commercial sense, as many expenses which a prudent business man would incur are not allowed in arriving at the assessable Income Tax profit. The practice, however, is far more liberal than the law, and many expenses which from a strictly legal point of view cannot be admitted are, in practice, allowed *if claimed*. (See p. 80.)

Profits which are not Chargeable.—Income Tax is not chargeable on profits of a casual nature. If a person realizes property or shares he is not assessable on the profit, however large it may be or however frequently it may arise. No tax is payable in respect of profits accruing from continuous speculations provided that the speculations do not constitute a business. A speculative builder who erects property with no intention of retaining it, but for the purpose of selling, is chargeable on the profits arising from such sales. (See also p. 138.)

Profits which are Chargeable.—The tax under Schedule D is levied under six Cases, the first three of which have certain applicable Rules. The subject-matters of the Cases

—which are contained in sec. 100 of the 1842 Act—are as follow :—

Case 1.—Profits of trade.

Case 2.—Professions, employments, or vocations.

Case 3.—Profits of an uncertain annual value not charged under Schedule A.

Case 4.—Foreign and Colonial securities.

Case 5.—Foreign and Colonial possessions.

Case 6.—Sweeping clause.

The existing Schedule of Charge is contained in sec. 2 of the 1853 Act :—

SCHEDULE D.

For and in respect of the **annual** profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere ;

And for and in respect of the **annual** profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere, and to be charged for every twenty shillings of the **annual** amount of such profits and gain : (*a*)

And for and in respect of the **annual** profits or gains arising or accruing to any person whatever, whether a subject of Her Majesty or not, although not resident within the United Kingdom, from any property whatever in the United Kingdom, or any profession, trade, employment, or vocation exercised within the United Kingdom, and to be charged for every twenty shillings of the **annual** amount of such profits and gains : (*a*)

And for and in respect of all interest of money, annuities, and other **annual** profits and gains not charged by virtue of any of the other Schedules contained in this Act, and to be charged for every twenty shillings of the **annual** amount thereof. (*b*)

CASE 1.

This case which covers "Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature

(*a*) See "Foreign," p. 199. (*b*) See "Interest," p. 256.

of trade, not contained in any other Schedule of this Act," contains the rules for assessment of practically all business undertakings, but excludes mines, gasworks, railways, waterworks and other concerns charged under No. III. of Schedule A (p. 55).

Rule I. reads as follows :—

> The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern, upon a fair and just average of three years, ending on such day of the year immediately preceding the year of assessment on which the accounts of the said trade, manufacture, adventure, or concern shall have been usually made up, or on the fifth day of April preceding the year of assessment, and shall be assessed, charged and paid without other deduction than is hereinafter allowed :
>
> Provided always, that in cases where the trade, manufacture, adventure, or concern shall have been **set up and commenced** within the said period of three years, the computation shall be made for one year on the average of the balance of the profits and gains from the period of first setting up the same: Provided also, that in cases where the trade, manufacture, adventure, or concern shall have been **set up and commenced** within the year of assessment, the computation shall be made according to the rule in the sixth case (p. 63) of this Schedule.

Income Tax Year.—The Income Tax year commences on the 6th April.

The Average System.

Assessments to Income Tax are, with a few exceptions, based on average profits, the basis varying from one year in the case of gasworks to the average profits of five years in the case of mines. Case 1 imposes an average of three years, and, if the accounts of a concern chargeable thereunder were made up to 30th September annually, the assessment for the year 1914-15 would be made on the average profits of the three years ended 30th September, 1913.

The average system is of benefit in the case of a business

which is expanding and, conversely, is disadvantageous in the case of a declining business.

New Concerns.—In the case of a new concern the assessment for the first year usually stands over until the completion of the trading of the first year, the result of which forms the amount of assessment for the first year and the second year. For the third year the average of the first and second years' profit is adopted, and for the fourth year the full average of three years comes into operation.

Assume, *e.g.*, that a new concern was commenced on 30th September, 1914, and that the accounts showed the following profits :—

	£
Year to 30th September, 1915	600
" " " 1916	1000
" " " 1917	2000
" " " 1918	3000

The assessments would be arrived at as follows :—

1914–15.

This assessment and that of 1915–16 would await the preparation of the first year's accounts to 30th September, 1915. As the business commenced on 30th September there would be six months' trading in the year to 5th April, 1915, and the assessment would thus be :—

$\frac{1}{2}$ of £600 = £300.

1915–1916 and 1916–17.

The first trading year to 30th September, 1915, would form the assessment, being £600.

1917–18.

	£
1915	600
1916	1000
	2)1600
Assessment . . =	£800

1918–19.

	£
1915	600
1916	1000
1917	2000
	3)3600
Assessment . . =	£1200

When the accounts are made up to irregular dates the average is arrived at as in the following actual example :—

The accounts furnished showed the following profits :

	£
Year to 31st March, 1911	203
10 months to 31st January, 1912	20
4 „ 28th May, 1912	13
19 „ 31st December, 1913	238

The assessment for 1914–15 was arrived at by taking the average of the three years ending 31st December, 1913, as follows :—

	£
¼ of year to 31st March, 1911	50
10 months to 31st January, 1912	20
4 „ 28th May, 1912	13
19 „ 31st December, 1913	238
3 yrs.	3)321
	£107

(See "Commencement," p. 50.)

The conversion of a private partnership into a limited liability company has been held in *Ryhope Coal Company Limited* v. *Foyer* (1881) (*c*) not to constitute a business "set up and commenced" within the terms of Rule 1, but in such a case the breakage of the average, and, therefore, assessment as a new business, may be achieved under Rule 4 to first and second Cases, sec. 100, 1842 Act (see p. 66), by proving that the profits have fallen short from a "specific cause."

Rule 4 enacts as follows :—

(*c*) 7 Q. B. D. 485 ; 45 L. T. 404 ; 30 W. R. 87 ; 1 Tax Cas. 343.

If amongst any persons engaged in any trade, manufacture, adventure, or concern, or in any profession, in partnership together, any change shall take place in any such partnership, either by death, or dissolution of partnership as to all or any of the partners, or by admitting any other partner therein, before the time of making the assessment, or within the period for which the assessment ought to be made under this Act, or if any person shall have succeeded to any trade, manufacture, adventure, or concern, or any profession, within such respective periods as aforesaid, the duty payable in respect of such partnership, or any of such partners, or any person succeeding to such profession, trade, manufacture, adventure, or concern, shall be computed and ascertained according to the profits and gains of such business derived during the respective periods herein mentioned, notwithstanding such change therein or succession to such business as aforesaid, unless such partners or such person succeeding to such business as aforesaid shall prove, to the satisfaction of the respective Commissioners, that the profits and gains of such business **have fallen short** or **will fall short** from some **specific cause**, to be alleged to them, since such change or succession took place, or by reason thereof.

(This rule is dealt with in detail at p. 66.)

For specific periods other than three years for calculating the amount of the assessable profit under No. III. of Schedule A (which is brought within the rules of Schedule D), see p. 55.

Two Undertakings.—In *Farrell* v. *The Sunderland Steamship Co., Ltd.* (1903) (*d*), the Company owned and traded with one ship, and subsequently acquired $\frac{32}{64}$ths of another ship and claimed to be assessed in one sum on the average of the profits derived by the Company from the two ships. It was held that the second ship, being a concern carried on jointly by two or more persons, must be assessed separately.

(See also Customs and Inland Revenue Act, 1890, sec. 23, p. 359, and sec. 101 of the Income Tax Act, 1842, p. 357.)

New Businesses.—Since the passing of the Finance Act, 1907, a claim may be made in the case of a new business that the assessments for the first three years be so adjusted (by repayment of tax paid if necessary) that the actual assessments coincide with the actual profits, thus rendering the

(*d*) 67 J. P. 209; 88 L. T. 741; 9 Asp. M. L. C. 416; 4 Tax Cas. 605.

average system inoperative, in result, for the first three years of the existence of the business, but this provision does not affect the making of the assessments for each year but merely acts as a subsequent adjustment thereof. The provision is contained in sec. 24 (2) :—

> Where a person charged or chargeable with income tax in respect of any profession, trade, or vocation which has been set up or commenced within the period of three years upon the average of which the profits or gains are to be taken under the Income Tax Acts, or within the year of assessment, proves at the **end of the year of assessment** to the satisfaction of the Commissioners by whom the assessment has been or can be made that the actual profits or gains arising from the profession, trade, or vocation in the year of assessment fall short of the profits or gains as computed in accordance with those Acts, he shall be entitled to be charged on the actual amount of the profits or gains so arising instead of on the amount of the profits or gains so computed, and, if he has paid the full amount of the tax on the profits or gains so computed, be entitled to repayment of the amount overpaid.

"End of year of assessment" means within a reasonable time thereof. See *Rex* v. *Special Commissioners ex parte Cape Copper Mining Co.* (1888), C. A. (*e*).

The working of this subsection is shown below, the profits being assumed as under, and the commencement of trading to have been 1st January, 1915.

	£
Year to 31st December, 1915	4000
,, ,, ,, 1916	3000
,, ,, ,, 1917	2000
,, ,, ,, 1918	800

Assessments.

1914–15.

$\frac{1}{4}$ (*i.e.* from 1st January to 5th April, 1915) of £4000 = £1000

1915–16.

1915 . . . . . £4000

(*e*) 21 Q. B. D. 313; 53 J. P. 84; 57 L. J. Q B. 513; 59 L. T. 455; 36 W. R. 776; 2 Tax Cas. 332, 347.

1916–17.

1915	£4000

1917–18.

	£
1915	4000
1916	3000
	2)7000
	£3500

The assessments (*a*) and profits (*b*) are thus as follows :—

	(*a*) £	(*b*) £	Repayments. £
1914–15 . . .	1,000	1,000	
1915–16 . . .	4,000	4,000	
1916–17 . . .	4,000	3,000	1000
1917–18 . . .	3,500	2,000	1500
	£12,500	£10,000	£2500

Repayment would, therefore, be claimed in 1916–17 and 1917–18.

In *The Steamship "Glenslog" Co., Ltd.* v. *Lethem* (1914), (*a*) the company acquired one ship, and commenced to trade in September, 1911, and the first accounts were made up to 20th November, 1912, being for a period of one year sixty-nine days. The 1912–13 assessment was made on one year's proportion of the profits shown by those accounts. The company contended that this method was incorrect, as the accounts were for a period ending after 5th April, 1912, and, therefore, not within Rule 1 (p. 47), and that the profits of two voyages ended on 25th July, 1912, should be followed. It was held that the assessment was correctly made. The LORD PRESIDENT stated that the provision of Rule 1 that when the trade has been set up within three years "the computation shall be made for one year on the average of the profits or gains from the *period* of first setting up the same" applied, and that it was necessary to determine when that period

(*a*) 51 Sc. L. R. 471 ; 6 Tax Cas. 453.

ended. He then ruled that the first setting up is equivalent to the commencement of the trader's first trading and profit and loss account, while the end of the period is the end of that account, and that the company's contention that the year of assessment must not be encroached upon was insupportable. LORD MACKENZIE concurred, and held that the first account is the basis, and that if that account ended prior to the commencement of the year of assessment that account would still have to be taken. But his lordship pointed out that if this latter position were adopted by companies the legislature would be capable of dealing with the matter.

DISCONTINUANCE.

Sec. 24 (3) of the Finance Act, 1907, contains the following provision as to discontinuance, similar in effect to that on Commencement (*ante*) :—

> Where a profession, trade, or vocation is discontinued in any year, any person charged or chargeable with income tax in respect of that profession, trade, or vocation, shall be entitled to be charged on the actual amount of the profits or gains arising from the profession, trade, or vocation in that year, and shall also, if he proves to the satisfaction of the Commissioners, by whom the assessment has been or could have been made, that the total amount of the income tax paid during the three previous years in respect of that profession, trade, or vocation, exceeds the total amount which would have been paid if he had been assessed in each of those years on the actual amounts of the profits or gains arising in respect of the profession, trade, or vocation, be entitled to repayment of the excess.

The claim is accepted if made within three years of the 5th April preceding discontinuance.

Assume that a business is discontinued on 30th September, 1915, and that the profits have been as follows :—

	£
Year to 31st December, 1909	8000
,, ,, ,, 1910	7000
,, ,, ,, 1911	5000
,, ,, ,, 1912	3000
,, ,, ,, 1913	3000
,, ,, ,, 1914	2000
9 months 30th September, 1915	500

The assessments would be as under for the years subject to repayment :—

1912–13.

	£
1909	8,000
1910	7,000
1911	5,000
	3)20,000
	£6,666

1913–14.

	£
1910	7,000
1911	5,000
1912	3,000
	3)15,000
	£5,000

1914–15.

	£
1911	5,000
1912	3,000
1913	3,000
	3)11,000
	£3,666

1915–16.

	£
1912	3,000
1913	3,000
1914	2,000
	3)8,000

5th April to 30th September = ½ of £2,666 = £1,333

The claim for commencement has to be made year by year, but that for discontinuance is a claim *en bloc*. The assessments (*a*) and profits (*b*) would, therefore, be as follows :—

	(*a*) £	(*b*) £	
1912–13	6,666	3000	
1913–14	5,000	3000	
1914–15	3,666	2000	
1915–16	1,333	333	($\frac{2}{3}$ of £500)
	16,665	8333	
	8,333		
	£8,332	= repayment	

No. III. of Schedule A.—The Income Tax Act of 1842, which was reprinted from that of 1806, continued an anomaly in reintroducing a distinction between the assessment of ordinary trading concerns and certain trading concerns having an intimate working connexion with land; such as mines, waterworks, way-leaves, etc. These excepted undertakings, instead of being included under Schedule D, are placed in No. III. of Schedule A, but the principles of assessment between the two classes of concerns do not differ materially since the passing of the Revenue Act, 1866 (*post*).

Each of the Income Tax Schedules is complete in itself, having its own rules of assessment.

No. III. enacts as follows :—

> The annual value of all the properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year, of the profits received therefrom within the respective times herein limited.
>
> **First.**—Of quarries of stone, slate, limestone, or chalk, on the amount of profits in the preceding year :
>
> **Second.**—Of mines of coal, tin, lead, copper, mundic, iron, and other mines, on an average of the five preceding years, subject to the provisions concerning mines contained in this Act :
>
> **Third.**—Of ironworks (*f*), gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains, and levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries and other concerns of the like nature, from or arising out of any lands, tenements, hereditaments, or heritages, on the profits of the year preceding :

(*f*) Ironworks refer to raw material, not to manufactured iron goods.

> The duty in each of the last three rules to be charged on the person, corporation, company, or society of persons, whether corporate or not corporate, carrying on the concern, or on their respective agents, treasurers, or other officers having the direction or management thereof, or being in the receipt of the profits thereof, on the amount of the produce or value thereof, and before paying, rendering, or distributing the produce or the value, either between the different persons or members of the corporation, company, or society, engaged in the concern, or to the owner of the soil or property, or to any creditor or other person whatever having a claim on or out of the said profits; and all such persons, corporations, companies, and societies respectively shall allow out of such produce or value a proportionate deduction of the duty so charged, and the said charge shall be made on the said profits exclusively of any lands used or occupied in or about the concern.

(The details of assessment of the above mentioned concerns are dealt with in the alphabetical list of "Deductible Expenses and Subjects of Assessment," commencing at p. 79.)

The Revenue Act, 1866, sec. 8, brought No. III. of Schedule A within a qualified scope of Schedule D by enacting that:

> The several and respective concerns described in No. III. of Schedule (A) of the said Act passed in the fifth and sixth years of Her Majesty's reign, chapter thirty-five, shall be charged and assessed to the duties hereby granted in the manner in the said No. III. mentioned, according to the Rules prescribed by Schedule (D) of the said Act, **so far as such Rules are consistent with the said No. III.** Provided that the annual value or profits and gains arising from any railway shall be charged and assessed by the Commissioners for special purposes.

This section has been extensively discussed in the Courts, and a decision in the case of *Knowles* v. *McAdam* (1877) (*g*), that the section transferred the concerns in No. III. of Schedule A bodily to Schedule D and thereby introduced the three years' average, was subsequently overruled in *Coltness*

(*g*) 3 Ex. D. 23; 47 L. J. Ex. 139; 37 L. T. 795; 26 W. R. 114; 1 Tax Cas. 161.

Iron Co. v. *Black* (1881) (*h*), (H. L.) where it was held that such alteration was not "either intended or expressed."

The true effect of sec. 8 is that the concerns under No. III. of Schedule A are to be assessed under such of the rules of Schedule D as do not contain provisions which would operate in opposition to provisions of Schedule A on similar points.

Thus the average for a mine is given in Schedule A as five years, and an average of three years is specified in Schedule D, therefore, as these specified periods are inconsistent with each other, the Schedule D provision as to period of average is inapplicable to Schedule A. Similarly, Schedule A has a provision in regard to setting off a loss on one mine against a profit on another mine (p. 271), while Schedule D has a similar provision in sec. 101 (p. 359), therefore sec. 101 is also inconsistent with mines, and consequently inapplicable to the case of two mines. It appears from the 24th Report of the Board of Inland Revenue, p. 78, that sec. 8 was passed to extend to mines the option of assessment by Special Commissioners instead of District Commissioners, an option operative in regard to Schedule D by sec. 131 of the 1842 Act, which enacts that "it shall be lawful for any person chargeable to the duties contained in the said Schedule D, . . . to require, if he shall think fit, that all proceedings in order to an assessment upon him, in respect of profits and gains chargeable under the said Schedule shall be had and taken before the Commissioners for special purposes."

Sec. 8, however, goes much further than the introduction of the option of assessment by the Special Commissioners, and the words "so far as such Rules are consistent with the said No. III." can only bear the wide interpretation of making all the Schedule D Rules applicable, except those which would alter existing Schedule A Rules, and those which are physically incapable of application. This contention is strengthened by sec. 188 of the 1842 Act :—

(*h*) 6 App. Cas. 315; 46 J. P. 20; 51 L. J. Q. B. 626; 45 L. T. 145; 29 W. R. 717; 1 Tax Cas. 287.

> Every **provision** (*i*) in this Act contained, and applied to the duties in any particular Schedule, which shall also be applicable to the duties in any other Schedule, and not repugnant to the **provisions** (*i*) for charging, ascertaining, or levying the duties in such other Schedule, shall, in charging, ascertaining, and levying the same, be applied as fully and effectually as if the application thereof had been so **expressly and particularly directed; anything herein contained to the contrary notwithstanding.**

Two conditions have to be fulfilled in the above section: (*a*) that the rules of Schedule D are applicable to No. III. of Schedule A, and (*b*) that they are not repugnant thereto. These conditions are practically coincident with the stipulation as to consistency in sec. 8 of the Revenue Act, 1866 (*ante*), so that sec. 188 alone is sufficient to remove any material distinction between Schedule D and No. III. of Schedule A, a matter which is rendered less difficult by the fact that No. III. of Schedule A has practically no Rules of its own, the original intention of the legislation evidently being that sec. 188 should alone be sufficient.

The construction to be put upon sec. 188 was considered in *Tennant* v. *Smith* (1892) H.L. (*k*), where a question was raised as to a particular taxable item being alternatively liable under Schedule D if it were not liable under Schedule E, and Lord Watson expressed the opinion that:

> "Assuming for the sake of argument, that the rules of assessment for employments and vocations under Schedule D differed in material respects from the rules for assessing public offices and employments under Schedule E, I do not think they would be applicable to cases falling under Schedule E, or could be applied without repugnancy."

The combined effect of sec. 8 of the Revenue Act, 1866, and sec. 188 of the 1842 Act is sufficient to make all rules of Schedule D applicable to No. III. of Schedule A, where such rules would not create an alteration of the existing rules of Schedule A, therefore where Schedule D possesses a rule or

(*i*) See p. 59.

(*k*) A. C. 150; 56 J. P. 596; 61 L. J. P. C. 11; 66 L. T. 327; 3 Tax Cas. 158.

part thereof on a point on which the rules of No. III. of Schedule A are silent, those rules of Schedule D are applicable to No. III. of Schedule A, provided that the nature of the concern in No. III. of Schedule A admits the operation of such rule of Schedule D.

In *Wakefield Rural District Council* v. *Hall*, [1912] C. A. (*l*), it was contended that waterworks (which are in No. III. of Schedule A) come by virtue of sec. 8 of the Revenue Act, 1866, within sec. 101 of the 1842 Act, which enacts:—

> Nothing herein contained shall be construed to restrain any person carrying on, either solely or in partnership, two or more distinct trades, manufactures, adventures, or concerns in the nature of trade, **the profits whereof are made chargeable under the rules of Schedule D,** from deducting or setting against the profits acquired in one or more of the said concerns the excess of the loss sustained in any other of the said concerns over and above the profits thereof, in such manner as may be done under this Act where a loss shall be deducted from the profits of the same concern.

It was held in the Divisional Court, and in the Court of Appeal, that sec. 101 is not a *rule* of Schedule D within the meaning of sec. 8 of the Revenue Act, 1866, and that sec. 101 could not be applied to waterworks. *There was, however, in this case no argument based on sec.* 188 *of the* 1842 *Act* which does not limit the applicability of Schedule D to *rules*, but admits "every *provision*," and, as it could not be questioned that sec. 101 is a "provision," the difficulty could have been overcome by means of sec. 188 (see also reference to sec. 133, *post*).

The question was also dealt with in *Ryhope Coal Co.* v. *Foyer*, [1881] (*m*) which referred to Rule 4 to 1 and 2 cases of Schedule D. Lindley, J., stated:

> "By the 8th section of 29 Vict. c. 36, No. III. of Schedule A is not touched, but you must substitute Schedule D for the whole of No. IV., obeying the injunction that you must not make the substitution where it would be inconsistent with

(*l*) 3 K. B. 328; 76 J. P. 437; 81 L. J. K. B. 1201; 107 L. T. 138; 28 T. L. R. 589; 10 L. G. R. 1002; 6 Tax Cas. 181.
(*m*) 7 Q. B. D. 485; 45 L. T. 404; 30 W. R. 87; 1 Tax Cas. 343.

what is left of No. III. Therefore wherever an average of three years is given in Schedule D you must in the case of a mine read five, and with that basis you are to apply Schedule D" (see p. 66 as to Rule 4).

A case came before the Commissioners on sec. 134 of the 1842 Act, which allows certain abatement to "any person charged to the said duties under Schedule D," who shall, *inter alia*, cease business, and it was contended that a mine did not come within the scope of the said section. The case was abandoned by the Surveyor of Taxes on it being stated that the benefit of sec. 133, was, prior to repeal of the section, extended, in practice, to mines. The corresponding words in the latter section were "any person charged to the duties contained in Schedule D," and, therefore, indistinguishable from sec. 134. That it was the intention of the legislature to apply sec. 133 to No. III. of Schedule A is apparent from Rule 5 of No. IV. of Schedule A, which provides for mines that are failing, and allows the assessment to be computed on the profits of the preceding year, "subject to such abatement on account of diminution of duty within the current year as is herein provided in other cases." This refers to sec. 133, and the marginal note of sec. 133 reads "abatement on account of diminution, etc." (See p. 270.)

See MINES, p. 270.

Rule II.—The said duty shall extend to every person, body politic or corporate, fraternity, fellowship, company, or society, and to every art, mystery, adventure, or concern carried on by them respectively, in the United Kingdom or elsewhere, as aforesaid; except always such adventures or concerns on or about lands, tenements, hereditaments, or heritages as are mentioned in Schedule A, and directed to be therein charged.

See Chapter XI. and p. 231, as to exemptions of Friendly Societies, etc., from Schedule D.

Partnerships.—Assessments on partnerships are made in one sum on the total profits irrespective of the number of partners, and, on individual claims to exemption, abatement,

or relief (see Chapter VI.), the assessment is in no way disturbed, but a division of the profits assessed is made in order to arrive at the income of each partner. Thus, if the Schedule D assessment is £1000 on a firm having three partners, A, B, and C, who share the profits in the proportions of $\frac{1}{2}$, $\frac{3}{8}$, and $\frac{1}{8}$ respectively, and claim abatements, separate *assessments* would not be made on the three partners, but the Surveyor of Taxes would allocate each partner's share, thus in the above example the income of A. would be taken as £500, B. £375, and C. £125.

The duties of making returns, &c., devolve on "the partners . . . jointly" (rule 3 to 1st and 2nd cases). This rule also provides that any partner other than he who has made the return in accordance with the above provision may merely return his name and place of abode, and that he is such partner, unless the Commissioners require further particulars, but, owing to the necessity of returning total income from all sources for the purpose of relief, (p. 332) this latter provision is inoperative in practice.

In *Farrell* v. *The Sunderland Steamship Co., Ltd.* (1903), (*n*) the Company owned and traded with one ship, but subsequently acquired $\frac{59}{64}$ths of another ship, and claimed to be assessed in one sum on the average profits derived by the Company from the two ships. It was held, following *A. G.* v. *Borrodaile* (1814), (*o*) that the second ship is a concern carried on by two or more persons jointly within the meaning of Rule 3, and that the profits must be assessed separately.

See also p. 50.

Case 2.

The second case is in respect of "professions, employments, or vocations."

Rule I.—The said duty on employments shall be construed to extend to every employment by retainer in any character whatever, whether such retainer shall be annual, or for a

(*n*) 67 J. P. 209; 88 L. T. 741; 9 Asp. M. L. C. 416; 4 Tax Cas. 605.
(*o*) 1 Price, 148.

longer or shorter period; and to all profits and earnings of whatever value, subject only to such exemptions as are hereinafter granted:

Rule II. The duty to be charged shall be computed at a sum not less than the full amount of the balance of the profits, gains, and emoluments of such professions, employments, or vocations (after making such deductions, **and no other,** as by this Act are allowed), **[on an average of three years]** ending as in the first case, to be paid on the actual amount of such profits or gains without any deduction, subject to the like provisions as are made in the first case in respect of the period of average, in the cases of setting up and commencing such profession, employment, or vocation, within the period herein limited: (*p*)

Rule III.—The third and fourth rules in the first case shall also extend to the profits arising under the second case, as far as they are applicable (*q*).

Bookmakers. In *Partridge* v. *Mallandaine* (1886) (*r*), it was held that a person who attends races and systematically bets is liable in respect of the profits he derives from the vocation of betting. The appellants, Messrs. Partridge & Hancox, according to the case, "attended race courses as bookmakers or betters on horse-racing . . . but . . . they did not take commissions for betting." It would appear from the following dicta that a man who makes a systematic business of betting would be liable to assessment:—

DENMAN, J.: "I do not think 'employment' necessarily means a case in which a person is set to work by other persons to earn money. A man may employ himself in order to earn money in such a way as to come within that definition, but I think the word 'vocation' is a still stronger word. It is admitted to be analogous to the word 'calling,' which is a very large word; it means the way in which a person passes his life, and it is a very large word indeed.

"But I go the whole length of saying that, in my opinion, if a man were to make a systematic business of receiving stolen goods, and to do nothing else, and he thereby systematically carried on a business and made a profit of £2000 a year, the Income Tax Commissioners would be quite right in assessing him if it were in fact his vocation." (See p. 79 as to "Deductions.")

(*p*) See p. 47. (*q*) See pp. 81–82.
(*r*) 18 Q. B. D. 276; 56 L. J. Q. B. 251; 56 L. T. 203; 35 W. R. 276; 2 Tax Cas. 179.

Case 3.

Case 3 covers "profits of an annual value not charged under Schedule A."

The basis of assessment is the profit of the preceding year "without any deduction" and Rule 2 extends to all securities bearing interest payable out of the public revenue (except securities chargeable under Schedule C, p. 399), all discounts and all interest not being annual interest, and it also includes securities under Schedule C, where the half-yearly payment does not amount to 50*s*. thus covering interest on War Loan.

See p. 293. Under sec. 3 of the War Loan (Supplemental Provisions) Act, 1915, war loan stock inscribed in the Post Office stock register is assessable under Case 3 when the stock does not exceed £200.

This Case also covers, by sec. 36 of the Finance Act, 1894, interest paid, or dividends or interest credited without deduction of tax to a depositor in any savings bank whose income exceeds £160 a year.

Sec. 102 of the 1842 Act charges under Case 3,

> all annuities, yearly interest of money, or other annual payments, whether such payments shall be payable within or without of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether the same shall be received and payable half-yearly or at any shorter or more distant periods.

When the above items are payable out of profits or gains brought into charge, no assessment is made on the recipient, as tax is deducted by the payer.

Cases 4 and 5.

See Foreign, p. 199.

Case 6.

The 6th Case of Schedule D is a sweeping clause and applies to "any annual profits or gains not falling under any

of the foregoing rules, and not charged by virtue of any of the other Schedules."

The basis of assessment is left to the discretion of the Commissioners and may be either on "the full value of the profits and gains received annually, or according to an average of such period greater or less than one year, as the case may require and as shall be directed by the Commissioners."

See p. 47.

WEEKLY WAGE EARNERS.

A distinct method of assessment for weekly wage earners has been introduced by secs. 27, 28, of the Finance (No. 2) Act, 1915, which provides that weekly wage earners shall be assessed quarterly in respect of their actual wages in each quarter, and collection shall be made accordingly. The provision is restricted to manual workers and does not cover clerks, typists, draughtsmen, or similar classes, and the expression "weekly wage earner" is statutorily defined as follows :—

The expression "weekly wage earner" means a person who receives wages which are calculated by reference to the hour, day, week, or any period less than a month, at whatever intervals the wages may be paid, or who receives wages, however calculated, which are paid daily, weekly, or at any less intervals than a month.

The determination of whether a person is within the provision or not is to be made "jointly" by the Board of Inland Revenue and the local Commissioners and their decision is final. For 1915–16 the above provisions do not apply.

Returns.—The employer is to make returns of wages paid, and a body corporate and company is liable to a penalty as well as the secretary, as provided for under sec. 21 of the 1907 Act.

Total Income.—Total income for purposes of abatement, exemption, &c. (p. 332), is to be based on the total wages charged for the four quarters of the year. The Board may allow abatement, &c., by reduction of the quarterly assessments or by repayment.

Assessment.—Assessment is provided for as follows:—

The Commissioners of Inland Revenue may make regulations generally with respect to the assessment and collection of income tax under this Act in the case of weekly wage earners, and with respect to the procedure to be adopted for the purpose, and may in particular by those regulations in the case of those weekly wage earners provide for the assessment of the tax by the surveyor of taxes and for the collection of the tax by a collector appointed by them, and for the application to the tax of the rules and provisions applicable to Schedule E, in cases where those rules and provisions are not otherwise applicable.

Recovery.—On default in payment recovery may be by the ordinary Income Tax method of distraint (p. 378) or summarily as a civil debt.

Appeal. Appeal may be made to the local Commissioners, who may add to their number by appointment (p. 3) or co-optation.

Additional Assessments.

Additional assessments under all Schedules may be made for the three preceding years. Sec. 23 of 1907 Act.

Succession and Reconstruction.

On a person or company succeeding to a business, or on alterations in the constitution of the proprietors of a business occurring, the question arises as to the basis of assessment being on either:

(1) The average of the three preceding years as if no change had taken place, or

(2) The actual profits made since such change.

It has to be decided whether the business is to be treated as (1) a continuing one, or (2) a new one. If the profits of the reconstructed concern are larger than those of the old concern, the assessment as a continuing business would be advantageous, as the average of the three preceding years

would be less than the actual profit of the current year, but if the converse prevails, assessment as a new business would be preferable. Assume that a succession takes place in 1914, and that the actual profits of the concern for the preceding three years were as follows:—

	£	
1911 . .	3000	
1912 . .	1000	average = £2000
1913 . .	2000	

In the ordinary course the assessment for 1914–15 would have been made on the average, viz. £2000, so that if the profits of 1914 prove to be *e.g.* £3000, a considerable benefit would result from maintenance in principle of continuity, but if the 1914 profits were £1000, a corresponding loss of tax on £1000 would be incurred for 1914. If the business were treated as new, the assessment would be on the profit of the first year's working.

There is, however, no legal option vested in the taxpayer indiscriminately to require assessment as a new concern, but treatment as a new business is obtained by proving that the profits have fallen short by reason of some "specific cause" (*post*). The legal provisions governing successions and other changes are Rule 4 to 1st and 2nd cases, Schedule D, sec. 100, 1842 Act, and sec. 134, 1842 Act.

Rule 4 to 1st and 2nd cases reads:

> If amongst any persons engaged in any trade, manufacture, adventure, or concern, or in any profession, in partnership together, any change shall take place in any such partnership, either by **death**, or **dissolution of partnership** as to all or any of the partners, or by **admitting any other partner therein**, before the time of making the assessment, or within the period for which the assessment ought to be made under this Act, or if any person shall have **succeeded** to any trade, manufacture, adventure, or concern, or any profession, within such respective periods as aforesaid, the duty payable in respect of such partnership, or any of such partners, or any person succeeding to such profession, trade, manufacture, adventure, or concern, shall be computed and ascertained according to the profits and gains of such business derived during the respective periods herein

mentioned, notwithstanding such change therein or succession to such business as aforesaid,

unless such partners or such person succeeding to such business as aforesaid shall prove, **to the satisfaction of the respective Commissioners**, that the profits and gains of such business have fallen short or will fall short from some **specific cause**, to be alleged to them, since such change or succession took place, or by reason thereof.

Section 134 of the Income Tax Act, 1842:

In case any person charged to the said duties under Schedule D, whether the computation thereon shall have been made on the profits of one year or on an average, as herein allowed, shall **cease** to exercise the profession, or to carry on the trade, employment, or vocation, in respect whereof such assessment was made, or shall **die**, or become **bankrupt or insolvent**, before the end of the year for making such assessment, or shall from any other **specific cause be deprived of or lose the profits or gains** on which the computation of duty charged in such assessment was made, it shall be lawful for such person, or his executors or administrators, **to make application** to the Commissioners for general purposes of the district **within three calendar months after the end of such year**; and on due proof thereof to **their** satisfaction the said Commissioners shall cause the assessment to be amended, as the case may require, **and give such relief to the party charged, or his executors or administrators, as shall be just**; and in cases requiring the same the said Commissioners shall direct, in manner before-mentioned, repayment to be made of such sum as shall have been overpaid on the assessment amended or vacated:

Provided always, that where any person shall have **succeeded** to the trade or business of the party charged, no such abatement shall be made, unless it shall be proved to the satisfaction of the said Commissioners that the profits and gains of such trade or business have fallen short from some **specific cause**, to be alleged to them and proved, since such change or succession took place, or by reason thereof; but such person so succeeding to the same shall be liable to the payment of the full duties thereon without any new assessment.

Dealing first with the question of succession, it will be seen that the concluding words of Rule 4 and sec. 134 are almost identical in terms, reading as follows, after reciting that succession alone shall not alter the basis of assessment:—

Rule 4.	Sec. 134.
unless such partners or such person succeeding to such business as aforesaid shall prove, to the satisfaction of the respective Commissioners, that the profits and gains of such business have fallen short *or will fall short* from some specific cause, to be alleged to them, since such change or succession took place, or by reason thereof :	unless it shall be proved to the satisfaction of the said Commissioners that the profits and gains of such trade or business have fallen short from some specific cause, to be alleged to them and proved, since such change or succession took place, or by reason thereof :

The addition in Rule 4 of the words "or *will* fall short" are consistent with the fact that Rule 4 is an assessment rule, *i.e.* a rule to be applied in the initial making of the assessment, and is not applicable for subsequent adjustment of the assessment. Moreover, a time limit for alleging specific cause is not given in Rule 4. Section 134, which imposes a time limit of claim, allows adjustment subsequently to the making and determination of the original assessment.

Specific Cause.—The words "Specific Cause" have a particularly wide meaning, contrary to the restricted interpretation advocated by the Crown, and the words are sufficiently comprehensive to cover all material alterations which have an adverse effect on profits. In the first place, assessments are intended to be made on the basis of the profits antecedent to the succession, if such basis would give a fair assessment, but the introduction of the provision with regard to specific cause was made to meet the cases where material difference between the constitution of the business prior to and subsequently to the succession, renders assessment on the antecedent profits inequitable, and when the actual intentions of the legislature, combined with the wide and unqualified nature of the provision in question are considered, it will be seen that a restricted and strained interpretation of the words "specific cause" is insupportable. The words "fallen short"

do not refer to the profits as a whole being reduced, but to a particular item only, thus the total profits of the altered concern may be greater than under the old regime and yet a "specific cause" be proved, such *e.g.* as when the profits immediately prior to succession are less than subsequently thereto but the *average* of the prior profits is higher.

A "specific cause" may be formed on the conversion of a private business into a limited liability company, owing to the payment of directors' fees. Assume that the conversion of a partnership took place on 1st January, 1915, and that the profits of the old business—the accounts of which were made up annually to 31st December—were as follows:—

Year to 31st December, 1911 . .	£3,000
,, ,, ,, 1912 . .	£2,000
,, ,, ,, 1913 . .	£4,000
,, ,, ,, 1914 . .	£6,000

The assessment on the partnership for the year 1914–15 would have been determined (some months before the conversion), as £3000, being the average profits of the three years ending 31st December, 1913. In practice the period from 1st January to 5th April is taken as one quarter. As the Income Tax year ends on 5th April, the assessment would be payable as regards three-fourths thereof by the partnership, and as regards one-fourth thereof by the limited company, but the latter would be entitled to allege "specific cause" under the latter parts of sec. 134 for the year 1913–14, and Rule 4 for the year 1914–15, thereby claiming to be assessed from the date of the conversion as a new concern, and thus ignoring past averages. As mentioned above, a "specific cause" would be formed by payment of directors' fees, which would reduce the *assessable* profits, and make the average of the three preceding years an incorrect assessment. This results from the fact that no deduction is allowed for partners' "drawings" in arriving at the assessable profit of a partnership, but, on conversion

to limited liability, such "drawings" become salaries and directors' fees, which are separately assessed on the recipient under Schedule E (p. 347). Assuming, in the above example, that drawings accounted for £1000 per annum, which sum was paid, after the conversion, to the former partners in the shape of salaries and directors' fees, it will be seen that assessment of the limited company on the basis of the profits of the partnership would be inequitable, and result in a double assessment of £1000; first, under Schedule D, and secondly, under Schedule E. On producing the accounts for the period between 1st January and 5th April, 1915, the limited company could claim, under sec. 134, to be assessed on the actual profits of that period, and for 1915–16 on the profits of the first year's trading to 31st December, 1915, when the accounts for that period are available (see "Average," p. 47). It could alternatively be claimed, as regards the period from 1st January, 1915, to 5th April, 1915, that the assessment on the limited company should stand over until the accounts for the year ending 31st December, 1915, are ready and then the assessment in question would be taken as one-fourth of the profits shown.

The limited company should be treated, for average purposes, as a "new business," but, in practice, assessment is made on the *actual* profits in each of the first 3 years.

The partnership should also claim under sec. 134 to have their assessment restricted to the actual profits made in the period from 5th April, 1914, to 31st December, 1914, unless such actual profits exceeded three-fourths of the amount assessed when the allocation to the partnership of the latter portion of the assessment should be claimed.

The amount of the allowances under sec. 134 are left to the sole discretion of the Commissioners, and there is no power in the Crown to question the Commissioners' ruling in the Courts, as the Crown's power to require the Commissioners to state a case for the opinion of the High Court only applies in the case of Appeals (see p. 325).

In *Furtado* v. *City of London Brewery Co. Ltd.*, [1914] C. A. (*s*), the company were assessed for the year 1910–11 on £63,384, and they alleged a "specific cause" of deprivation of profits under the first part of sec. 134, on the grounds that the increased Licence Duties imposed by the Finance (1909–10) Act, 1910, reduced the profits by £27,000, by which amount the company claimed to have the assessment reduced. The case was decided in the Court of Appeal in favour of the company, that the Commissioners' decision was final, and, owing to the independent constitution of the Commissioners (see p. 3), and their freedom from official connexions with possible bias, it is of particular benefit to the taxpayer that the Crown is unable to review such decision. Owing to the Court holding itself bound by the fact that it had no jurisdiction to review the Commissioners' determination, the actual interpretation of the words "specific cause" was not dealt with, but the Commissioners are now able to give and maintain an equitable construction on a technical point, a point which is of obvious benefit to taxpayers. The following dicta of Swinfen Eady, L.J., are of *considerable moment* :—

> "By the Income Tax Act, 1842, sec. 118, a right of appeal is given to any person thinking himself aggrieved by any assessment, provided it is brought within the time limited. On such an appeal, the appellant disputes the validity of the assessment.
>
> "By secs. 133 (since repealed) and 134 of the same Act, applications may be made for abatement on account of diminution of income, or ceasing to exercise the trade before the end of the year, or from any other specific cause being deprived of the profits or gains on which the assessment was made. On these applications, the validity of the assessment is not disputed, but admitted, the claim for relief being based upon something which has happened since the assessment was made, and which could not have been made the subject of an appeal against the assessment.
>
> "The argument for the Crown in support of the claim to an appeal on applications made under sec. 134 is based upon the following words in sec. 118: 'and no appeal shall be received

(*s*) 1 K. B. 152–709; 83 L. J. K. B. 255; [1913] W. N. 354; 30 T. L. R. 177; 58 S. J. 270; 6 Tax Cas, 382.

after the time so limited, except on the ground of diminution of income as herein mentioned.' These words occur in a section giving a right of appeal against assessments, and limiting the time within which such appeals may be brought. The words 'and no appeal shall be received after the time so limited' make it clear that 'appeals' can only be brought within the time limited and not afterwards.

"We are quite unable to hold that the provision excepting these applications from the time within which appeals can be brought is sufficient to make them appeals, which they are not in fact, and to give a right of appeal to the High Court which would not otherwise exist.

"Sec. 134 gives the right 'to make application,' not to appeal. There is not anything from which the applicant is appealing. The reference in the same section to causing 'the assessment to be amended' is purely consequential. Similar words were contained in sec. 133, but have dropped out of sec. 24 of the Finance Act, 1907, which has now replaced sec. 133.

"It was urged by the Solicitor-General that sec. 164 made applications for exemption 'appeals,' which they would not otherwise be; and if so, why might not sec. 118 have the same effect with regard to applications on the ground of diminution of income? The answer is that applications for exemption under sec. 164 are in substance and in fact appeals against any assessment being made. The person claiming exemption disputes that he ought to be assessed to income tax at all; and if he succeeds, the Commissioners are required to 'discharge the assessment,' and if the surveyor objects, the taxpayer is given an appeal to the Commissioners against the assessment, in like manner as other aggrieved persons are given a right to appeal against their assessments.

"In all these cases, the complaint is against the assessment, and is strictly an appeal against the assessment.

"We are of opinion that an application for relief under sec. 134 is not 'an appeal' under the Income Tax Acts, and is not within sec. 59 of the Taxes Management Act, 1880, and the Commissioners have no power to state a case, and consequently that the decision of SCRUTTON, J., was correct."

A "*specific cause*" may also arise in, *inter alia*, the following examples:—

(1) Retirement of a partner when such retirement is synonymous with loss of custom, whether through loss of personal influence or withdrawal of capital.

(2) Payment of interest on a bank overdraft raised on a withdrawal of capital.

(3) Widow succeeding to business of husband and being compelled to employ a manager.

(4) Son succeeding father in an agency business, but some of the agencies not being given to the son.

(5) On retirement of partner, a workman setting up in opposition.

(6) Succession to a retail business, but not taking over all the branches; or otherwise discontinuing part of the business.

(7) Succession by non-working partners to a business of working partners, and consequent employment of managers or extra foremen.

(8) Payment of directors' fees on conversion of private partnership to limited liability.

(9) Colliery company taking over a colliery which at the time of succession had just worked out a thick seam of coal, leaving only thin seams, which were less productive, and therefore resulted in a "falling short" of the profits.

(10) Death of a partner in a profession when such partner personally influenced certain business.

The War is prohibited from being a "specific cause" by sec. 13 (2) of the Finance Act, 1914 (Sess. 2).

Example.

A Company took over a business on 1st August, 1914, and the accounts from 1st August, 1914, to 31st March, 1915, show £500 profit. The assessment on the old company was £2000 for 1914–15, based on the average profits of the three preceding years. The actual profits of the old company for the period from 31st March to 31st July, 1914, were £200, and the actual profits of the new company from 1st August, 1914, to 31st March, 1915, were £500. Notice was given by the old company on 1st July, 1915, that a reduction to the said actual profit of £200, or the proportion thereof, from 6th April to 31st July, was claimed from £666 ($\frac{1}{3}$ of £2000) under sec. 134 on the ground of "cessation" under the first part of the

said section, and on 1st July, 1915, the new company claimed under sec. 134 that their portion of the assessment, viz., £1333 (⅔ of £2000), be reduced to £500 on the grounds of "specific cause" (*ante*), under the latter part of the said section, and as both companies had paid their respective amounts of tax on the original assessment, repayment could be claimed.

See as to the old company "Discontinuance," p. 53, and as to the new company "Commencement," p. 50.

Admission of Employee as Partner.—On admission of an employee into partnership the assessment on average includes profits which have been reduced by the amount of the employee's remuneration, which latter was separately assessable on the recipient, whereas a partner's drawings and profits are not separately assessable so that the average is disadvantageous to the Revenue, but this cannot legally be avoided as Rule 4 specifically provides that, on the admission of a partner, the assessment shall be based on the average of the three preceding years "notwithstanding such change." Assuming profits to be £750 after debiting the employee's remuneration of £250, the assessment for *e.g.* 1915–16, on the employee becoming a partner in that year, would be £750, whereas the profits accruing to the partners would be £1000.

Cessation. Sec. 134, in its references to cessation, is not limited to complete cessation of the business but merely to cessation *by the person assessed*, as an opposite construction would introduce a distinction between the taxation of persons involved in the respective circumstances of (*a*) ceasing to carry on a business which has in itself ceased to exist, and (*b*) ceasing to carry on a business which has been continued by another person. This distinction is non-existent as the section deals with the person assessed, not with the business, and, moreover, it is clearly inequitable that a benefit granted to (*a*) should be denied to (*b*). This should also apply to "Discontinuance" (see p. 53). Sec. 134 also extends to give exemption and abatement (see p. 332).

Sec. 134 is elaborated in sec. 24 (3) of the Finance Act, 1907, "Discontinuance" (see p. 53).

The following cases relate to Rule 4:—*Rylope Coal Co.* v. *Foyer* (1881) (*t*). The conversion of a private partnership into a limited liability company was held to create a succession, but an extraordinary depression of trade was advanced as, and held to constitute a "Specific Cause."

> Grove, J.: "The Scotch Court, in the case which has been referred to, held that depression of trade was a 'specific cause.' In one sense I agree with them, except that I should put it thus, that depression of trade may be, but is not necessarily, a specific cause. It must be, to my mind, to make it a specific cause, something unusual, exceptional, extraordinary. Here there was, to use the words of the Commissioners, an 'extraordinary depression in the iron and coal trades,' by which it is found that the profits of this concern are reduced to less than half its former profits. I think, therefore, the Appellants come within that section, and are entitled to the benefits of it; and I think that the assessment should be on the profits and gains for one year."

(See also *Inland Revenue* v. *Farie*) (1878) (*u*).

Highland Railway Co. v. *Special Commissioners of Income Tax* (1885) (*x*). The railway company, who were also sea carriers under their special Act, discontinued certain steamships which they had been running at a loss, and it was held that in the following year the assessment must be based on the net profits of the whole undertaking in the year preceding the year of assessment (railways are not assessable on the three years' average, see p. 55). The Surveyor of Taxes claimed that as the steamship portion of the business was not being carried on in the year of assessment it should be excluded from the profit of the preceding year, thus avoiding the reduction of the assessment by the amount of the loss on the steamships, but the Lord President held that: "I think, therefore, that the preceding year to the year of assessment having been taken as that upon the profits of which

(*t*) 7 Q. B. D. 485; 45 L. T. 404; 30 W. R. 87; 1 Tax Cas. 343.
(*u*) 16 Sc. L. R. 189. (*x*) 23 Sc. L. R. 116; 13 R. 199; 2 Tax Cas. 151.

the assessment is to be made, the Commissioners were bound to take the profits of that year just as they actually stood, in point of fact, whether any part of the business of that year has been discontinued in the subsequent year, or not."

Alexander Ferguson & Co., Ltd. v. *Aikin* (1898) (*y*). The Company acquired the business of a firm of whisky distillers, blenders, &c., and for some years prior to such acquirement the firm had not worked any distillery, but the Company worked a distillery and in the accounts for a period of about 14 months after its formation, included the results of the business carried on at such distillery. The Commissioners decided that there was not a succession within Rule 4 as there was not a sufficient or general identity between the business carried on by the old partnership and the new business carried on by the new Company, and that therefore the assessment could not be based on the average profits of the three preceding years but on the average profits, since acquirement by the Company (about 14 months). The former would give a smaller assessment owing to the distillery not being worked during the whole of the three years. This case is clouded by the Commissioners' finding of fact which precludes review in the Courts (p. 325), but the LORD PRESIDENT, while holding that the question of identity is a question of fact not for the Court to decide, expressed his agreement with the Commissioners' ruling.

> LORD MCLAREN held that "on the question of continuity of management, the case of Ryhope (*ante*) is an authority to the effect that there may be continuity in the person of a Joint Stock Company as well as in that of a private firm taking over a business. No such question is raised here. As regards the identity of the character of the business, that appears to me, as it does to your Lordships, to be a pure question of fact, because there may be cases where there is substantial identity, notwithstanding some difference as to the branches carried on, and there may be cases where a new concern carrying on a large business, absorbs a small one, and cannot in any legitimate sense be regarded as their successors;

(*y*) 4 Tax Cas. 36.

but this is a question of fact for the Commissioners, and I assume they have rightly decided it."

Bell v. *National Provincial Bank of England, Ltd.* [1904] (*z*), C. A. The Bank, which had 199 branches, purchased the business of the County of Stafford Bank at Wolverhampton (which had only one office) and took over the staff. The profits from the Wolverhampton branch were then indistinguishably merged in the general profits. The Crown contended that there was a "succession" within Rule 4, and that, therefore, the Profits of the Stafford Bank should fall into the average, but the Company urged that their acquisition of the Stafford bank should be treated on the same footing as the opening of a new branch, *i.e.* the profits of the branch prior to its acquirement should be ignored in the computation of the three years' average for assessment on the profits of the National Provincial Bank. It was held that there was a "succession" and that the profits of the Stafford Bank fell to be included in the three years' average.

The Master of the Rolls stated that:

"It seems to me that the words of Rule 4 are plain, and that if the National Provincial Bank had not existed, but some new company had been formed to take over for the first time the business of the Stafford Bank, there would have been a case directly falling in terms within the words of the 4th Rule: 'If any person shall have succeeded to any trade, manufacture, adventure or concern.' In the case I put of a new company formed for the first time and acquiring the Stafford Bank, that would clearly be a case of a person succeeding to a concern. What difference does it make that that person who succeeds to the concern should himself already have an existing business? Does he the less succeed to the new one because he had the old one? It seems to me certainly not. He had the old one before. He has the old one still and the new one in addition, and to the new one, it seems to me, he has succeeded."

Watson Bros. v. *Lothian* (1902) (*a*). A tramp steamship (*i.e.* a cargo ship having no regular trading ports) was

(*z*) [1903] 2 K. B. 249; 67 J. P. 329; 72 L. J. K. B. 590; 88 L. T. 840; 19 T. L. R. 532; reversed [1904] 1 K. B. 149; 98 J. P. 107; 73 L. J. K. B. 142; 90 L. T. 2; 52 W. R. 406; 20 T. L. R. 97; 5 Tax Cas. 1.

(*a*) 4 F. 795; 39 Sc. L. R. 604; 4 Tax Cas. 441–6.

sold, but no books, accounts, or lists of customers were included in the sale. The LORD PRESIDENT held that if the books and a list of customers had been transferred, and if there had been any introductions or recommendations given, a very different state of facts would have occurred, but the case in point was comparable with a ship being put up to auction. He further pointed out that "succession" is a case analogous to a change in partnership, and that if a succession had occurred in the case of the ship, it would equally apply to a horse bought in open market, or to a carriage knocked down at a sale. LORD MCLAREN gave an important dictum in that the question of succession is one of fact (see p. 325 as to the Commissioners' despotic powers on points of *fact*).

In *Stockham* v. *Wallasey U.D.C.* (1906) (*b*), a tramway undertaking was transferred to a new company and the latter at the same time acquired the business of an omnibus company, carrying on the two businesses simultaneously. Under a statutory power of compulsory purchase a local authority purchased the tramway concern and proceeded to substitute electric trams for the horse-drawn vehicles. It was held that the local authority had succeeded the company and had not commenced a new business. The assessment was, therefore, to be made on the average of the three preceding years.

(See p. 162, "Depreciation" as to the effect of succession on allowances for depreciation.)

In order to constitute "succession" there must be a continuity of identity of the business, but if assessment on the average under "succession" would result in an assessment higher than an assessment on the profits since succession, the proving of a "specific cause" (*ante*) will bring the assessment on to the basis of that of a new business.

Pure Succession.—When there is a succession devoid of material change, and, therefore, of "specific cause," sect. 62

(*b*) 71 J. P. 244; 95 L. T. 834; 5 L. G. R. 200.

of the Taxes Management Act, 1880, applies and gives repayment where necessary. Sub-sec. 2 reads:

> The commissioners shall cause notice to be given to the respective parties of a meeting of commissioners for considering the same; and the commissioners shall, on the examination of the respective parties, if in attendance, or on other satisfactory proof of the facts, adjust the assessment by charging the successor with a fair proportion thereof from the period of his succeeding to the concern and relieving the person originally assessed from a like amount.

The adjustment in the case of a pure succession is, in practice, made by the Surveyor, and in some instances is divided in proportion to the respective number of days applicable to each party, and in other cases by the level months approximately applicable. The taxpayer may require the operation of the former method.

Taking *e.g.* an assessment of £1460 and that B succeeded on 10th August to the business of A the division would be as follows:—

A

$\frac{127}{365}$ of £1460 = £508

B

$\frac{238}{365}$ of £1460 = £952

£1460

Deductible Expenses.

As was pointed out at the commencement of the chapter on Schedule D, the most vitally important part of Income Tax law and practice is that covering deductible expenses. In dealing with this question the law and practice, with general principles, are first given, and then deductions are individually treated alphabetically. In this alphabetical arrangement are also included particular taxable subjects and concerns, as these have such an intimate connexion with deductible expenses as to render it inadvisable to separate their treatment from that of such expenses.

It is strictly necessary with regard to claims for admission of expenses as deductions, that advantage be taken of the powers of the District Commissioners with regard to the adoption of equitable constructions on hard technical points. To be consistent with justice, profits for Income Tax purposes should not differ from profits in a commercial sense, and, to a very material degree, the District Commissioners are able to make assessments approximate to the latter, as they possess, in practice, very extensive discretionary powers. The Commissioners' decision on a point of *fact* is conclusive, as it cannot be reviewed (p. 325), but on a point of law the Surveyor of Taxes may require the Commissioners to state a Case for the opinion of the High Court of Justice. It is only on exceptional points that Surveyors of Taxes make such a request, as they do not question the discretionary powers of the Commissioners, although they persistently urge adherence to strict legal construction.

In *W. Smith* v. *Incorporated Council of Law Reporting* (1914) (p. 265), it was laid down that the Commissioners were to decide (what was a question of *fact*) whether deductions claimed were sums "wholly and exclusively" (*c*) expended for the purpose of the trade and that the only remaining question for the decision of the Court was whether there was evidence upon which they could make their findings of fact.

Owing to the entire independence of the various bodies of District Commissioners, who are in no connexion with the procedure outside their individual districts, there is an absence of uniformity in practice throughout the kingdom, thus creating the situation of a particular allowance being admitted in one district and refused in another; but if the taxpayer acquaints the Commissioners with the fact that the allowance has been made in another district the Commissioners would generally admit such allowance.

The Income Tax law does not specify many deductible

(*c*) Page 82.

expenses, but leaves the question to turn on the words "wholly and exclusively" (*post*).

The law involved, which has been the subject of many highly controversial cases in the Courts, is as follows, and refers to Schedule D, and applies to No. III. of Schedule A (see p. 349 for Schedule E) :—

Rule 3 to Case 1, Schedule D.

In estimating the balance of profits and gains chargeable under Schedule D, or for the purpose of assessing the Duty thereon, no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains, on account of any sum expended for

repairs of premises occupied for the purpose of such trade (*d*), manufacture, adventure, or concern, nor for any sum expended for the

supply or repairs or alterations of any implements, utensils, or articles employed for the purpose of such trade, manufacture, adventure, or concern

beyond the sum usually expended for such purposes according to an average of three years preceding the year in which such assessment shall be made;

nor on account of **loss not connected with or arising out of such trade,** manufacture, adventure, or concern; nor on account of any **capital withdrawn therefrom**; nor for any

sum employed or intended to be employed as capital in such trade, manufacture, adventure, or concern; nor for any

capital employed in improvement of premises occupied for the purposes of such trade, manufacture, adventure, or concern; nor on account or under pretence of any

interest which might have been made on such sums if laid out at interest; nor for any

debts, except bad debts proved to be such to the satisfaction of the Commissioners respectively; nor for any

average loss beyond the actual amount of loss after adjustment; nor for any sum recoverable under an

insurance or contract of indemnity.

The specific items mentioned in the above and the following rules are dealt with in detail under the respective headings

(*d*) The deduction for repairs is restricted to repairs of premises *occupied* for the purposes of the trade, but see "Tied Houses," p. 107.

in the alphabetical list of "Deductible Expenses and Subjects of Assessment," commencing at p. 92.

Rule 4 to Case 1, Schedule D.

In estimating the amount of the profits and gains arising as aforesaid no deduction shall be made on account of any **annual interest,** or any **annuity** or other **annual payment,** payable out of such profits or gains.

Rule 1 to Cases 1 and 2, Schedule D.

In estimating the balance of the profits or gains to be charged according to either of the first or second cases, no sum shall be set against or deducted from, or allowed to be set against or deducted from such profits or gains, for any disbursements or expenses whatever,

not being money **wholly and exclusively laid out or expended for the purposes of such trade,** manufacture, adventure, or concern, or of such profession, employment, or vocation; nor for any disbursements, or expenses of

maintenance of the parties, their families or establishments; nor for the

rent or value of any dwelling-house or domestic offices, or any part of such dwelling-house or domestic offices, except such part thereof as may be used for the purposes of such trade or concern, not exceeding the proportion of the said rent or value hereinafter mentioned (*e*), nor for any sum expended in any other domestic or private purposes, **distinct** from the purposes of such trade, manufacture, adventure, or concern, or of such profession, employment, or vocation.

Sec. 159 of Income Tax Act, 1842.

In the computation of duty to be made under this Act in any of the cases before mentioned, either by the party making or delivering any list or statement required as aforesaid, or by the respective assessors or commissioners, **it shall not be lawful to make any other deductions therefrom than such as are expressly enumerated in this Act** (*f*),

nor to make any deduction on account of any annual interest, annuity, or other annual payment to be paid to any person

(*e*) *I.e.* in sec. 101, p. 357.

(*f*) In *Alianza Co., Ltd.* v. *Bell*, [1905] 1 K. B. 184; 74 L. J. K. B. 219; 92 L. T. 184; 53 W. R. 257; 21 T. L. R. 134, affirmed [1906] A. C. 18; 75 L. J. K. B. 44; 93 L. T. 705; 54 W. R. 413; 22 T. L. R. 94; 5 Tax Cas. 172, deduction in respect of a "wasting asset" was refused, and this section was referred to. *Lord Robertson* stated that "in its express prohibition of an allowance being made for capital, it on the face of it, refers to all the various cases under the various Schedules."

out of any profits or gains chargeable by this Act, in regard that a proportionate part of the duty so to be charged is allowed to be deducted on making such payments, nor to make any deduction from the profits or gains arising from any property herein described, or from any office or employment of profit, on account of

diminution of capital employed, or of loss sustained in any trade, manufacture, adventure, or concern, or in any profession, employment, or vocation.

(See also "Annual Value," p. 92. "Doubtful Debts," p. 99.)

Many contrary judicial opinions have been given on what constitutes assessable Income Tax profit, and, apart from the allowances specified by law, the constitution of a deductible allowance is left to the operation of the words "wholly and exclusively laid out or expended for the purposes of such trade," therefore the issue in practically all questions of deductible expenses is influenced solely by these words. The Crown has advocated a strained interpretation of the words, contending, in effect, that only expenses without which the business could not be carried on are admissible, thereby making Income Tax "profit" unrecognizable from a commercial point of view and approximating to gross profit instead of net profit. This argument would require the words "wholly and exclusively" to read "wholly, exclusively, and *necessarily*." As the legislature has not made this addition it cannot be assumed that it is implied, in view of the fact that when the legislature intended the word "necessarily" to be incorporated it has done so specifically, as proved by the Schedule E provisions as to deductions, which, by sec. 51 of the Income Tax Act, 1853, read:—

> "in assessing the duty chargeable under Schedule E of this Act in respect of any public office or employment, where the person exercising the same is **necessarily** obliged to lay out and expend money wholly, exclusively, and **necessarily** in the performance of the duties of his office or employment, it shall be lawful to deduct" such expenses.

Sec. 52 of the said Act enacts that the deductible

allowances to clergymen are limited to expenses incurred "wholly, exclusively, and *necessarily*, in the performance of his duty or function as such clergyman."

The above Schedule E provisions clearly create a distinction between that Schedule and Schedule D, and demonstrate that the admission of all expenses which are *bonâ fide* laid out for the purpose of increasing profits, and which do not fall within the specifically prohibited allowances (*ante*), was intended by the legislature as being sufficiently secured by the wide words "wholly and exclusively." These words, however, were interpreted in *Watney* v. *Musgrave* (1880) (*g*) (see p. 108) in a particularly narrow sense, but in subsequent cases the dicta in question were strongly disapproved.

KELLY, C.B., stated:

> "that it is merely and only the costs and expenses of production of the article that are to be deducted. . . . I am not aware that there is any authority whatever for any deduction of any expenses whatsoever incurred after the beer is produced and really to promote or increase the sale."

The above dicta would reject travellers' salaries and, in fact, be equivalent to contending that "trading" for Income Tax purposes consisted solely of producing and not also of selling. The CHIEF BARON also advanced the point that advertisements, not being necessary to production, are inadmissible, but such expenses are admitted without question (except under exceptional circumstances, see p. 99).

The insupportability of the above case is manifested in *Smith* v. *Lion Brewery Co., Ltd.*, [1911] (see p. 113), CHANNELL, J., holding that:

> "The case of *Watney* v. *Musgrave* has expressions in it which may be contradictory to that (*deductibility*), but expressions which it can hardly be pretended and it is not pretended, would bear critical examination."

Moreover, in *Reid's Brewery Co., Ltd.* v. *Male* (1891) (see

(*g*) 5 Ex. D. 241; 44 J. P. 968; 49 L. J. Ex. 493; 42 L. T. 690; 28 W. R. 491; 1 Tax Cas. 272.

p. 110), it was stated that the Lord Chief Baron possibly had not before him "all the cases that might possibly arise in the future which might militate against the decision which he gave." *Watney* v. *Musgrave* is, therefore, not decisive of the contention that the words "wholly and exclusively" infer the inclusion of the word "necessarily."

It has been extensively advocated by the Crown that the words in question prohibit the allowance of expenses which are not a necessary feature of the carrying on of the business, although such expenses create an increased profit which bears tax. This contention is one which the Commissioners should be urged to reject as its operation results in a portion of the profits being taxed but disallows expenses without which it is impossible to obtain such increased portion of the profits.

A similar point was raised in *Guest, Keen, and Nettlefolds, Ltd.* v. *Fowler*, [1910] (*h*) (see p. 290) and decided against the Crown. The appellants were members of the Steel Hoop Manufacturers' Association and the objects of the association were maintenance of prices, thus, by avoiding competition, larger profits were produced than would have been otherwise possible. Each of the members of the association was entitled to a fixed percentage of the total orders received by the whole of the members, and if any member had invoiced more than the percentage, a fixed amount of 10*s*. per ton on the excess had to be paid by that member to the association, which distributed the payment in due proportions amongst the members who had invoiced less than their proportionate quantities. The appellants were charged on the excess of the total payments made by them over the receipts from the association.

> Bray, J., held that "it seems to me that I am bound to find that this money was paid for the purpose of keeping up the price and thus earning the larger profits of the trade. Therefore, unless there is any authority to the contrary, I think I am bound to find that the Appellants have shewn that

(*h*) 1 K. B. 713; 79 L. J. K. B. 563; 102 L. T. 361; 26 T. L. R. 337 5 Tax Cas. 511.

this is money 'wholly or exclusively laid out or expended for the purpose of such trade.'"

This decision introduces a wide interpretation of the words in question, and *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1915) (p. 87), has definitely decided that expenses necessary to earn particular increased profits are fully allowable. LORD PARKER held that "the increased profits are assessable to Income Tax under Schedule D, and, therefore, all necessary cost and expenditure entailed by their possession must necessarily be brought into account in ascertaining the balance of profits and gains of the trade." This covers the case of, *e.g.*, expenditure of multiple shop companies on branches.

The question of payments made by one company to another was raised in *Moore* v. *Stewarts & Lloyds, Ltd.* (1906) (*h*), where a company made agreement with another company in the same business to make up the profits of the latter company to a certain amount in consideration of the former being given a commanding interest in the latter. Deduction was claimed of payments under the agreement and these were allowed as the question was one of fact for the Commissioners. The payments were held not to be an application of profits earned but an outlay to earn the profits.

In *Strong & Co. of Romsey, Ltd.* v. *Woodifield*, [1906] (*i*) the company, who were brewers, owned a licensed house which they had under management. A guest obtained damages in respect of injuries sustained at the inn through a falling chimney, and it was held in the House of Lords that the damages did not form an allowable deduction from the brewery profits as they were not wholly and exclusively incurred in the course of the business as innkeepers but "fell upon them in their character not of traders but of householders."

LORD CHANCELLOR: "In my opinion, however, it does not follow that if a loss is in any sense connected with the trade, it must always be allowed as a deduction; for it may be only

(*h*) 43 Sc. L. R. 811; 8 F. 1129; 6 Tax Cas. 501.
(*i*) A. C. 448; 75 L. J. K. B. 864; 95 L. T. 241; 22 T. L. R. 754; 5 Tax Cas. 215.

> remotely connected with the trade or it may be connected with something else quite as much as or even more than with the trade. I think only such losses can be deducted as are connected with it in the sense that they are really incidental to the trade itself. They cannot be deducted if they are mainly incidental to some other vocation, or fall on the trader in some character other than that of trader."

His lordship further mentioned that the nature of the trade has to be considered. Compensation to railway passengers might be deducted by the railway company, but not a loss incurred by a grocer owing to a window shutter falling and injuring a man walking in the street.

Lord Davey expressed the opinion that a deductible expense is not created by being made in the course of, or arising out of, or being connected with, the trade, or being made out of the profits of the trade. "It must be made for the purpose of earning the profits."

A brewery company having houses under management, has obviously to incur the risk of such damages in the course of the business, and, as regards a deductible expense being made for the purpose of earning the profits, it is obvious that the particular profits of the particular house cannot be earned without incurring the possibility of having to bear the expense of damages.

Lord James of Hereford, although concurring in the decision, had doubts which he stated would not have existed had the accident occurred to a stranger walking in the street.

Income Tax Profit.

The question of deductible expenses and, therefore, Income Tax profit, has been placed on an entirely different basis by *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1915) (*a*), under which case Income Tax profit and commercial profit are one and the same except that the former specifically prohibits certain expenses. *Income Tax profit is commercial profit with the sole exception that certain expenses are expressly prohibited,*

(*a*) A. C. 433; 84 L. J. K. B. 417; 59 S. J. 144; 112 L. T. 651; 31 T. L. R. 104; 6 Tax Cas. 399.

therefore, unless a particular expense is specifically prohibited, it is allowable for Income Tax purposes. Many questions turn on whether an expense is attributable to capital or revenue, but it was laid down in *English Crown Spelter Co., Ltd.* v. *Baker* (1908) (p. 135), that capital for Income Tax purposes is capital as understood "in common parlance," *i.e.* commercially, and this was supported in *Vallambrosa Rubber Co.* v. *Farmer* (1910). LORD LOREBURN in *Usher's* case, laid down that "profits and gains must be estimated on ordinary principles of commercial trading by setting against the income earned the cost of earning it, subject to the limitations prescribed by the Act," and LORD PARMOOR held that "deduction must be made of all expenditure incidental to the trade necessary to earn the receipts, and by applying, in the computation, the ordinary principles of commercial trading." LORD PARKER ruled that where a deduction is proper and necessary to be made in order to ascertain the balance of profits and gains, "it ought to be allowed notwithstanding anything in the First Rule (p. 82) or in sec. 159 (p. 82), provided there is no prohibition against such an allowance in any of the subsequent Rules applicable to the case."

EARL LOREBURN also mentioned that the decision in the case may cut deep into the Revenue "not merely from brewery profits, but also from other trades which have ancillary trades connected with or supported by them."

The following dicta are on "profits" for Income Tax purposes:

"It cannot, of course, be denied that, as a matter of business, profits are ascertained by setting against the income earned the cost of earning it, nor that as a general rule, for the purpose of assessment to the Income Tax, profits are to be ascertained in the same way.

"What is the meaning of 'profits and gains' as found in the concluding words of the fourth rule? Unless the context requires a different meaning, or the words appear to be used throughout the Act in another sense, I think they must be

construed according to their ordinary signification. When we speak of the profits and gains of a trader we mean that which he has made by his trading. Whether there be such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise.

"In the taxing provision of the Income Tax Acts the tax is imposed in respect of the annual profits or gains arising or accruing to any person from any trade, 'to be charged for every twenty shillings of the annual amount of such profits or gains.' Here, it cannot be doubted, I think, the words 'profits or gains' are used in the sense I have indicated. There is nothing in any part of the Act to show the contrary. Indeed when the rules are considered they confirm the view that this meaning is to be attributed to the words. Their general purpose is to prohibit certain matters being taken into account which ought not to be set against the receipts when profits are being ascertained. But the scheme of the Act obviously is to tax, not receipts, but profits properly so called." *Gresham Life Assurance Society* v. *Styles*, [1892] (*k*).

> "For the purpose of arriving at the balance of profits, all those deductions from the receipts, all that expenditure which is necessary for the purpose of earning the receipts must be deducted, otherwise you do not arrive at the balance of profits, indeed, you do not ascertain and cannot ascertain whether there is such a thing as profit or not. The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. That seems to me to be the meaning of the word 'profits' in relation to any trade or business.' *Russell* v. *Aberdeen Town and County Bank* (1888) (*l*).
>
> "The difference between the expenses necessary to earn the receipts of the year, and the receipts of the year, are the profits of the business for the purpose of the Income Tax." *City of London Contract Corporation* v. *Styles* (1887), C. A. (*m*).
>
> "Now the profit upon which the Income Tax is charged is

(*k*) A. C. 309; 56 J. P. 709; 62 L. J. Q. B. 41; 67 L. T. 479; 41 W. R. 270; 3 Tax Cas. 185.

(*l*) 13 App. Cas. 418; 53 J. P. 244; 58 L. J. P. C. 8; 59 L. T. 481; 2 Tax Cas. 321.

(*m*) 4 T. L. R. 51; 2 Tax Cas. 239.

what is left after you have paid all the necessary expenses to earn that profit. Profit is a plain English word; that is what is charged with Income Tax." *Ashton Gas Company* v. *A. G.*, [1906] (*n*).

In construing specific allowances for wasting assets and ruling that such was money "employed or intended to be employed as capital" within Rule 3, *ante*, it was stated that the law does "not permit . . . all deductions which a prudent trader would make in ascertaining his own profits." This, however, refers to a specific provision of the law, and not solely to the words "wholly and exclusively." *Alianza Company, Ltd.* v. *Bell*, [1906] (*o*).

The destination of profit is immaterial. *Mersey Docks* v. *Lucas* (1883) (*p*).

EXTENT OF THE WORDS "WHOLLY AND EXCLUSIVELY."

The multitudinous cases which have arisen on the interpretation of these words—words which occupy the premier position of importance in Income Tax—have created many inconsistencies between the various rulings, but the discrediting of *Watney* v. *Musgrave* and the important issue of *Guest, Keen, and Nettlefolds, Ltd.* v. *Fowler*, supplemented by the momentous case of *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, have supported the intention that the words in question have not the restricted inequitable meaning which has been so often advanced by the Crown. The words "wholly" and "exclusively" are scarcely distinguishable, and in *Strong & Co. of Romsey, Ltd.* v. *Woodifield* (*ante*), it is difficult to support any argument that the damages were not incurred wholly in the course of the business, as it is not easy to distinguish the accident from one occurring at the brewery to an employee.

(*n*) A. C. 10; 70 J. P. 49; 75 L. J. Ch. 1; 93 L. T. 676; 22 T. L. R. 82; 13 Mans. 35.

(*o*) A. C. 18; 75 L. J. K. B. 44; 93 L. T. 705; 54 W. R. 413; 22 T. L. R. 94; 5 Tax Cas. 172.

(*p*) 8 App. Cas. 891; 53 L. J. Q. B. 4; 49 L. T. 781; 32 W. R. 34; 2 Tax Cas. 25.

To contend that expenses are not incurred wholly for the purpose of a business is equivalent to assuming that business incorporates a strong charitable element. It is not permissible to look at the actual destination of the expenses, but the question to be considered is, *has the trader expended the money solely with the intention of benefiting his business?* (See p. 118.)

It is an unquestionable fact that many refused deductions are laid out solely with a view to the acquisition of profit, and in the words "wholly and exclusively laid out or expended for the purposes of such trade," the word "trade" clearly means the act of trading for the purpose of profit, and as it cannot be contended that trading concerns are charitable institutions, it follows that all expenses of such concerns are, so far as the proprietors of the concerns are concerned, expended wholly and exclusively for the purpose of obtaining the profits of such concerns. It is immaterial if the expenses indirectly benefit matters outside the particular business, as such effect should not be taken cognisance of, as it may be outside the influence of the proprietors of the business in question. The question to be considered is, are the expenses incurred *by the traders* solely for the purpose of his trade, *i.e.* of "trading"—acquiring a profit—or has the trader in view the object of rendering gratuitous assistance to some object outside his business, and are the expenses necessary to the acquirement of the particular profit which is sought to be taxed? When the matter is thus dissected it will be seen that the words "wholly and exclusively" do not bear a restricted meaning, and that they have in view solely the *intentions of the trader*. Moreover it is clearly inequitable and contrary to the intentions of the legislature to tax a particular profit without allowing the expenses, without which that profit could not have been made. The words "laid out or expended" mean by the *trader assessed*, and do not take cognisance of any indirect and unintended benefit.

It may be urged that the decided cases prevent the admission of what are in some instances legitimate trading

expenses, but, apart from items so specifically determined, and other expenses inadmissible in terms of law, there is considerable room for argument. The discrediting of *Watney* v. *Musgrave* has disposed of the extreme interpretation of "wholly and exclusively," and, combined with the comparative significance of the word "necessarily" in Schedule E, the hitherto neglected notice of the word "trade," and the absence of pure philanthropical intentions of the trader, render the admissibility of ordinary legitimate expenses a question of very material reason.

The case of *W. Smith* v. *Incorporated Council of Law Reporting* (1914), (p. 289), introduces a reasonable interpretation, and it was laid down that the Commissioners were to determine the question of *fact* "is the money wholly and exclusively" laid out for the purpose of the trade, the Court's duty being merely to decide if there was evidence to support such findings.

The application of the words in question to deductible allowances settled in the Courts, will be seen in the alphabetical list of Deductible Expenses (*post*).

DEDUCTIBLE EXPENSES AND SUBJECTS OF ASSESSMENT.

ANNUAL VALUE.

A necessary expense of a trading concern is that of accommodation for its works, offices, etc., and, where rent is paid, that rent forms a deductible expense. If, however, the net Schedule A assessment (*i.e.* the amount on which tax is *paid*) exceeds the rent, the net Schedule A assessment is substituted as the deduction. Thus, if a rent of £100 is paid and the Schedule A assessment is £120, the occupier is presumed to have a beneficial occupation, *i.e.* that he pays no rent in regard to the value represented by the excess of the Schedule A assessment over the rent. The Schedule A tax has to be paid by the occupier, who is entitled to deduct it when paying his rent, but such deduction is restricted to tax on the amount of rent, thereby

leaving the occupier to bear tax on the said excess as if he were owner of a portion of the premises represented by the excess. This places the occupier on an equal footing (in regard to such excess) with an occupier who is also owner. The latter bears tax under Schedule A, which tax is on "profits" of annual value, and, therefore, when the Schedule D assessment is being arrived at, a deduction is allowed of the amount of the net Schedule A assessments. The benefit of this provision is, peculiarly, not universally claimed (one of the largest trading concerns in the country having omitted to claim), and when it is considered that the Schedule A assessments may amount to thousands of pounds the importance of the point is obvious.

In the case of a beneficial occupation the practice is to write back the rent and allow the full net Schedule A assessment as a deduction.

Authority for Deduction. There is no specific legal provision for the deduction, but there is no distinction in effect between the various Income Tax Schedules, all of which form a tax on profits, and if a trader who owned his business premises, and therefore pays and bears his tax under Schedule A, were not allowed to deduct the amount of the Schedule A assessment from his business profits for assessment under Schedule D, double taxation would be incurred.

It is provided by Rule 2 to 1 and 2 Cases, Schedule D that:

> "The duty to be charged in respect of any trade . . . shall be made exclusive of the profits or gains arising from lands, tenements, or hereditaments occupied for the purpose of such . . . trade."

In *General Hydraulic Power Co., Ltd.* v. *Hancock* (1913), (*post*), Scrutton, J., in commenting on Lord Herschell's opinion (*ante*), against the *right* to the deduction, stated that:

> "I hesitate to rush in where Lord Herschell had some doubts about treading, but it does seem to me that if the question should become material on some future occasion it may very

> well be considered whether the right to make the deduction does not follow from the express words of the second rule applicable to both the first and second Cases under Schedule D. . . . It is, I think, quite possible to read that as a direction that when you assess the profits of the trade carried on on lands, you are to assess the profits of the trade and the profits and gains arising from lands separately, and shall not include in the profits from trade profits or gains arising from lands."

It may be, however, that Rule 2 was intended to apply to Schedule B, which is a tax on the profits of occupation, and a trading concern having extensive lands which could be cultivated without detracting from their use in the ordinary course of the business, could be charged under Schedule B on the profits of the land, which profits would then be omitted under Schedule D. The inclusion of tenements and hereditaments may be explained as covering, *e.g.*, farm buildings, and Schedule B in terms assesses the concerns charged under Schedule A.

In *Russell* v. *Aberdeen Town and County Bank* (1888) (*q*) LORD HERSCHELL stated that "it is not disputed that the annual value of premises exclusively used for business purposes is properly to be deducted in arriving at the balance of the 'profits and gains,'" but that "there may be a question where the right to make that deduction is to be found." He was of the opinion that it is allowed, "because it is an essential element to be taken into account in ascertaining the amount of the balance of the profits."

It is also provided by sec. 9 of the Finance Act, 1898, which assumes the allowance of Schedule A assessments:—

> Where in estimating the amount of annual profits or gains arising or accruing from any profession, trade, employment, or vocation, and chargeable to income tax under Schedule D of the Income Tax Act, 1853, any sum is deducted on account of the annual value of the premises used for the purpose of such profession, trade, employment, or vocation, the sum so deducted shall not exceed the amount of the assessment of the premises

(*q*) 13 App. Cas. 418; 53 J. P. 244; 58 L. J. P. C. 8; 59 L. T. 481; 2 Tax Cas. 321.

for the purpose of income tax under Schedule A to the said Act, as reduced for the purpose of collection under sec. 35 of the Finance Act, 1894 (*r*).

No. III. of Schedule A.—In concerns under No. III. of Schedule A, such as mines, waterworks, etc., the question of deduction of annual value assessed under Schedule A does not arise, as no separate Schedule A assessment is made on such concerns, which are assessed as an entity on the profits alone.

Basis of Calculation.—The question as to whether the annual value to be deducted should be calculated on the average of the three preceding years, or based on the net Schedule A assessments of the current year, was raised in *General Hydraulic Power Co., Ltd.* v. *Hancock*, [1914] (*s*), when it was decided that the former was the correct basis. The company's Schedule A assessments had increased during the said three years, so that their contention that the basis should be the current year, would have resulted in an increased allowance. The Schedule D assessment in question was for the year 1911-12, and the actual profits and Schedule A assessments were as follows :—

	1908.	1909.	1910.
Profits	65,370	66,327	69,773
Deduct Schedule A	21,449	21,616	21,616
	£43,921	£44,711	£48,157

This gives an average profit of £45,596.

The net Schedule A assessments for 1911–12 were £24,096, and if this were deducted instead of the average of the three preceding years, the assessment would be £43,060. A comparison of the Schedule A assessment, in the case of an owner-occupier, with the rent paid by a tenant-occupier, disposes of the question in equity, as rent, being a trade

(*r*) See p. 27. Sec. 35 refers to deduction for repairs, and, therefore, the allowance to be made from the Schedule D assessment is the *net* Schedule A assessment.

(*s*) 2 K. B. 21; 30 T. L. R. 203; 6 Tax Cas. 445.

expense, is unquestionably deductible on the average. The Crown's contention that the average amount should be deducted was allowed by the Court, SCRUTTON, J., stating that "If the appellants rented these premises, instead of owning them, there is no doubt that the method adopted by the Crown would be the right method." Moreover, under the average calculation, if the premises were rented *e.g.*, in 1908 and 1909, and purchased in 1910, the assessment would in no way be affected, assuming the rent and Schedule A to be equal.

Partly used as Dwelling-house.—Where the dwelling-house is partly used for business purposes a limited deduction is permissible in respect thereof.

Rule I. to 1st and 2nd Cases, Schedule D, enacts that no deduction shall be made :

> "for the rent or value of any dwelling house or domestic offices, or any part of such dwelling house or domestic offices, except such part thereof as may be used for the purposes of such trade or concern, not exceeding the proportion of the said rent or value hereinafter mentioned" (*i.e.* in sec. 101).

Sec. 101 of the Income Tax Act, 1842, enacts :—

> "nothing herein contained shall be construed to restrain . . . any such person renting a dwelling house, part whereof shall be used by him for the purposes of any trade or concern or any profession hereby charged, from deducting or setting off from the profits of such trade, concern, or profession such sum not exceeding two-third parts of the rent *bonâ fide* paid for such dwelling-house, with the appurtenances, as the said respective commissioners shall on due consideration allow."

The above provisions, which, in practice, cover Rent and Schedule A, arise in the case of *e.g.* a Doctor or Dentist, and the ascertainment of the portion of the Rent or Schedule A assessment to be deducted proceeds on the basis of the portions and relative values of the rooms devoted to business, but an important point arises in the case of a professional man such as a Dentist, who, in order to secure and maintain a good class of client with the consequent high fees—and, therefore, *increased* profits *on which Income Tax is paid*—occupies a

house in a good class neighbourhood with a high rent, a house which, in accordance with the income of the Dentist, would be entirely out of proportion from the point of view of residence only. Assuming that one-fourth of the premises is used for business purposes, it would *primâ facie* follow that one-fourth of the rent or net Schedule A assessment would be deductible, but this is subject to a material qualification as, in the above case, consideration should be paid to the actual expense of the house attributable to the business—the actual expense incurred for the purpose of acquiring the profit—but observing the limit of two-thirds. If the rent or net Schedule A assessment of the house is £60, the maximum allowance would be £40, and the *primâ facie* allowance on the basis of relation between business and residential portions (as above) £15. Assuming, however, that the residential part of the house is larger than would otherwise be necessary, or that the exclusiveness of the situation of the house is such as to result in high rents, the Dentist would be entitled to claim deduction of such part of the rent as is not represented by normal residential necessity, a question which would be one of fact to be determined on the particular circumstances of the case.

Public Houses and Hotels.—The two-thirds limit operates harshly, in practice, in the case of Public Houses and Hotels, but this harshness proceeds from a misconstruction of sec. 101 (*ante*). The proprietor of such a business does not rent "a dwelling-house, part whereof shall be used by him for the purposes of any trade," but he rents *business premises partly used for the purposes of a dwelling-house*, which is an entirely different proposition, and one not in the contemplation of sec. 101, which merely refers to cases such as Dentists and Surgeons, thus leaving the deduction for rent or net Schedule A assesment to be the full amount thereof less *primâ facie* the value of the portions used by the proprietor as his residential quarters. In addition to the illegality of applying sec. 101 to Public Houses and Hotels, the inequity is very pronounced,

as in the case *e.g.* of a Public House rented at £200, the residential quarters may not be worth more than £13 a year, whereas the operation of sec. 101 would assume such value to be a minimum of £66, an absurdity which is heightened by the comparative smallness of the profits of such a business (see LORD MACNAGHTEN, *post*).

See *Gillatt and Watts* v. *Colquhoun* (1884) (p. 132).

Tied Houses.—See *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] H. L., at p. 101.

In *Russell* v. *Aberdeen Town and County Bank* (1888) (*ante*), the bank owned the buildings in which its business was carried on, and part of the buildings were occupied as residences by the bank managers and agents. It was held that the bank could deduct the Schedule A assessments on the whole value of the premises.

LORD HERSCHELL stated that the portion of the bank in which the Manager resides is as much used for the purposes of the business of the bank, as if it were used in any other way, as the manager resides there for the purposes of the bank.

His Lordship, in referring to a contention that the whole of the building is a dwelling-house, said that:

> "I do not think that the word 'dwelling-house' is here used in any such sense; and that a bank or a manufactory or a warehouse becomes a dwelling-house, because some servant of the trader resides in that building for the purposes of the trade."

LORD FITZGERALD expressed the opinion that the occupation of certain rooms for purposes of protection does not convert the premises into a dwelling-house.

LORD MACNAGHTEN said that "I think the expression 'dwelling-house' in that Rule (Rule 1 to 1st and 2nd cases Schedule D, *ante*, p. 96), means a house in which the person, liable to pay income tax, dwells in the ordinary sense of the word."

Clergymen.—It is provided by sec. 28 of the Finance Act, 1907, that:

Where a clergyman or minister of any religious denomination pays rent for a dwelling-house, and uses any part thereof **mainly and substantially for the purposes of his duty** or function as such clergyman or minister, such part of the rent of the dwelling-house, not exceeding one-eighth, as the Commissioners . . . may allow, shall be treated for the purposes of sec. 52 of the Income Tax Act, 1853, as expenses to which the provisions of that section as to deduction and repayment apply.

Annuities.

(See Insurance Co.)

Allowances.

Voluntary allowances of the nature of gifts, such as sums paid towards the support of relatives in straitened circumstances, are not admissible as deductions in computing liability, or "total income" for abatements, etc. (see p. 334).

Advertising.

The expenses of ordinary advertising are allowed in practice, but not the preliminary expenses in respect of advertisements on the commencement of a business nor extensive advertisements on the opening of a new branch. In the case of businesses which necessitate enormous and continuous expenditure on advertisements, the full cost thereof is admissible.

Agents.

(See "Foreign," p. 217.)

Bad Debts.

Bad debts are deductible (Rule 3 to 1st Case, Schedule D, p. 81), and the following provision admits doubtful debts, but in practice it is not of general use :—

In ascertaining, estimating, or assessing the profits of any person chargeable under Schedule D of this Act, either upon appeal or otherwise, it shall be lawful to estimate the value of all doubtful debts due or owing to such person; and in the

case of the bankruptcy or insolvency of the debtor, the amount of the dividend which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof, and the duty chargeable under the said Schedule shall be assessed and charged upon the estimated value of all such doubtful debts accordingly. (Sec. 50 of Income Tax Act, 1853.)

Reserves.—Sums placed to reserves for bad and doubtful debts are not allowed, but bad debts actually written off form the deduction in practice. While an increase in a bad debt reserve is thus written back a decrease forms an allowable deduction as debts have been paid out of a *taxed* reserve.

Under sec. 50 the practical equivalent to a reserve may be deducted but it is usually required that the allowance for doubtful debts shall not be in the form of a percentage deduction on all debts but that the doubtful debts shall be treated individually. When the doubtful debts are actually realised any (*a*) excess or (*b*) deficiency over the amount deducted under sec. 50 should be accounted for by charging (*a*) or deducting (*b*) from the next account. It is of obvious desirability that an allowance for doubtful debts should be claimed, as otherwise tax would be paid on profits which may never be realized and an *ultimate* full deduction for bad debts is not comparable with a *present* allowance.

BANK.

(See as to "Amalgamation," p. 77; as to "Agents," p. 199 (Foreign); and as to Deduction of Tax, p. 386.)

Under sec. 30 of the Finance (No. 2) Act, 1915, a bank carrying on a *bonâ fide* banking business in the United Kingdom shall be relieved by repayment, or otherwise, from tax under Schedule C (p. 354), in respect of interest on securities which are proved to the Special Commissioners to represent subscriptions by the bank to any Government war loan, issued before or after the passing of the Act, for the purposes of the war. The interest is to be included in the Schedule D assessment under Case 1.

Bonus.

A company raised money and agreed to pay the lenders, on the repayment of the loans, a bonus of 10 per cent. It was held that this could not be deducted. *Arizona Copper Co.* v. *Smiles* (1891) (*a*).

Bookmakers.

(See p. 62.)

Books.

The expenditure on new books included in preliminary expenses is admitted. (See also "Preliminary Expenses," p. 287.)

Brewing.

Many contentious points have arisen in connexion with the assessments on brewing.

Tied Houses.—Brewers make a very extensive practice of acquiring "tied houses," *i.e.* licensed premises which are let, at rents considerably less than the real annual value, to tenants who covenant to purchase beers, etc., solely from the particular brewery, thus materially increasing the sales of the brewery and consequently the profit. Income Tax is paid on the whole of the latter, and deduction is now allowed by *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] H. L. (*t*), (*post*) of the following expenses incurred by the brewer in connexion with the maintenance of "tied houses," which expenses (where applicable) of houses *managed* by servants of the brewer were always allowed :—

(1) Repairs.

(2) Licence Insurance and Fire Insurance Premiums.

(3) Licences and Rates paid for tenants.

(4) Legal costs (as *post*, p. 104).

(5) Difference between the net Schedule A and the rents received from the tenants (*u*).

(*a*) 29 Sc. L. R. 134; 3 Tax Cas. 149.

(*t*) A. C. 433; 84 L. J. K. B. 417; 59 S. J. 144; 112 L. T. 651; 31 T. L. R. 104; 6 Tax Cas. 399.

(*u*) See "Annual Value," p. 92.

A deduction is also permitted for the Compensation Levy (*post*).

The existing commercial conditions applicable to brewing, render it practically impossible to carry on a successful brewing business without the possession of "tied" houses, as the number of "free" houses is so limited that the outlet for the brewery products would be strictly and very seriously limited if it were restricted to Public Houses other than those "tied," therefore it is commercially expedient and necessary that "tied" houses should be held as an integral part of the brewery machinery. Increased profits are obviously made by the use of "tied" houses, and as tax has to be paid on such increased profits it is difficult to reconcile, in equity, the disallowance of the expenses in question. In *Smith* v. *Lion Brewery Co., Ltd.*, [1911] H.L. (*x*), which dealt with the Compensation Levy in respect of "tied" houses (*post*), a payment which, though compulsory in law is no more compulsory than the above refused allowances so far as regards commercial necessity, FARWELL, L.J., expressed the following pointed opinion :—

> "To put a concrete case: brewers sell x barrels without tied houses and make £1000 yearly profit; they sell $x + y$ barrels with tied houses and make £1500 profit; the payment of the levy in respect of these tied houses was necessarily made for the purpose of enabling them to sell the y barrels, and the Crown, claiming tax on the £500 resulting as the profit therefrom, or, in other words, claiming a share of the profits (for the tax is a part of the profits) is bound to allow a deduction for a compulsory payment without which these particular profits could never have been earned at all."

Brewers charge their "tied" tenants more for beers, etc., than could be obtained from a "free" tenant and in this way also an increased profit, *which is taxed*, accrues. The discounts allowed by brewers are not uniform throughout the country, one large brewery giving 20 per cent. to "tied"

(*x*) [1909] 2 K. B. 912; 73 J. P. 447; 78 L. J. K. B. 1089; 101 L. T. 145; 53 Sol. Jo. 696; 25 T. L. R. 748, C. A.; [1911] A. C. 150; 80 L. J. K. B. 566; 104 L. T. 321; 5 Tax Cas. 568.

tenants and 22½ per cent. to "free" tenants, whilst in some cases "free" terms may reach 30 per cent. "Tied" terms may be as low as 15 per cent.

(See p. 18 for Schedule A assessments in relation to Licence Duty.)

"**Managed**" *v.* "**Tied.**"—In the case of managed houses the admission of the expenses was not questioned, but, from the point of view of the brewer, there was no material distinction. A "tied" house is, in effect, held by the brewer in the course of his business and, on a change from "tied" tenancy to management, the expenses refused in the former become automatically allowable in the latter. A brewer, on acquiring a Public House, has two available methods of utilizing it for the carrying on of his trade (trade is not restricted to *producing* but comprises *selling*) and he often selects tenancy, it being obvious that a tenant, having an interest in the business varying with the amount of the trade, may be relied upon to endeavour to extend the sales.

The Crown contended :—

(*a*) That the expenses were not "wholly and exclusively" laid out for the trade of the brewery within Rule 1 to 1st and 2nd Cases, Schedule D (p. 82), but were partly expended for the benefit of the tenant, as the trade of the "tied" house was the tenant's trade. (See "wholly and exclusively," p. 90, and *Usher's case*, p. 104.)

(*b*) That the brewers did not *occupy* the "tied" house within the meaning of Rule 3 to 1st Case, Schedule D (p. 81), which limits allowance for repairs to premises "occupied for the purpose of such trade."

(*c*) That the relation of the brewers to the "tied" house was only that of landlord.

This latter contention is discounted by the fact that on a Public House losing its licence, the premises are disposed of as soon as possible, thus proving that they are only acquired in the course of and for the purpose of the trade, and not as investments.

In *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] H. L. (*y*), the company claimed the following "tied" house expenses.

(*a*) Repairs to "tied" houses £1,004 0*s.* 10*d.*

(*b*) Difference between rents of leasehold houses or Schedule A assessment of freehold houses on the one hand, and rents received from "tied" tenants on the other hand £2,134 14*s.* 6*d.*

(*c*) Fire and licence insurance premiums £90 7*s.* 6*d.*

(*d*) Rates and taxes £38 7*s.* 6*d.*

(*e*) Legal and other costs £56 7*s.*

As regards (*a*) the tenants were under legal obligations to repair but did not do so. Had the brewers availed themselves of their legal remedy the tenants would no doubt have left the houses or required a reduction in the rent.

With (*b*) the item was produced by the brewers letting the houses at considerably less than their full annual value as "free" houses.

The legal costs in (*e*) included the following :-

(1) Renewal of publicans' licences.

(2) Surrenders, terminations, and assignments of leases, or tenancy agreements thereof.

(3) Charges in connexion with the assessments of "tied" houses for poor rate, including attendances before assessment committees and obtaining reductions.

(4) General charges in connexion with "tied" houses relating to complaints against tenants, advising the brewery as to thefts of beer, etc.

(5) Charges relating to the brewers' position as to getting a full licence, and as to his proposal to give up a claim to compensation, on getting a full licence.

In the Divisional Court the above items were allowed, except repairs which were held to be decided by *Brickwood & Co.* v. *Reynolds* (*post*), but in the Court of Appeal the PRE-

(*y*) A. C. 433 ; 84 L. J. K. B. 417 ; 59 S. J. 144 ; 112 L. T. 657 ; 31 T. L. R. 104 ; 6 Tax Cas. 399.

sident of the Probate, Divorce and Admiralty Division, held that all the expenses were inadmissible as *Brickwood & Co.* v. *Reynolds* (with which he agreed) was binding on (*a*), that (*b*) was more accurately described as losses of rents or annual values of freehold and leasehold properties than as such disbursements or expenses as aforesaid, and that as the rents of these tied houses did not come into or form part of the trade profits of the brewery, sums by which the rents were reduced or allowances made out of such rents could not be debited. (Rents received, being taxed under Schedule A, could not, however, in any case be brought into the profits for Schedule D purposes.) The President held further that the agreement to accept the lower rents could not be held to be within the words "wholly and exclusively" laid out for the purposes of the trade of the company, as the disbursements were laid out or expended in part to increase the profits of the tenants' trade and in part also to maintain and increase the value of the good-will of the business.

It was urged by the Crown, and accepted by his Lordship, that if the company's claim were allowed, property of the value of £2,134 would escape taxation as the tenant is legally entitled to deduct, in arriving at his Schedule D assessment, the net Schedule A assessed on the "tied" house less the rent (see "Annual Value," p. 92). It does not, however, seem correct to look at the indirect effect on the assessment of a distinct person, and, moreover, in practice the loss would be practically non-existent as almost all publicans (who seldom keep accounts) return an estimated profit in round figures, and are accordingly assessed on round figures in excess of the return, thus ignoring any deduction in respect of the net Schedule A.

It has been advanced in regard to the claim for Fire Insurance premiums that the allowance for repairs under Schedule A is intended to include Fire Insurance premiums, but this argument is a fallacy, as the deduction from a trader's profits under Schedule D in respect of Annual Value (see p. 92) is restricted to the *net* Schedule A assessment, thus leaving

repairs and other items in the $\frac{1}{8}$th deduction under Schedule A, to be deducted solely under Schedule D.

The remaining items were also held to be inadmissible.

The above case was stated to cover repairs executed indifferently to the business part of the premises and the living quarters of the tenant, as in *Brickwood & Co.* v. *Reynolds*, thus giving the Crown the opportunity of contending that the repairs were not "wholly and exclusively" incurred for the purpose of the brewers' trade.

The case went, however, to the House of Lords, where the *whole* of the items were unreservedly allowed in wide terms. The decision has affected a revolution in Income Tax deductible expenses, and its vitally important bearing thereon is dealt with at p. 87.

The rulings in the House of Lords on profits generally are given at p. 87, while the decisions on actual items are dealt with below. In the first place LORD LOREBURN held that the case was practically decided by *Smith* v. *Lion Brewery Co., Ltd.* (1911), *ante*, which laid down *inter alia* that expenses paid to keep going another business "the success of which was essential to their own" were deductible, and that the said decision proceeded on this point, not on the fact of the compensation levy being statutorily payable, as it is immaterial whether the necessity to pay arises by statute or from business considerations. LORD ATKINSON supported the latter, and stated that when a trader creates in himself or acquires a particular estate or interest in premises wholly and exclusively for the purpose of using that interest to secure a better market for his trading commodities, money devoted to discharging a liability imposed by statute on that state or interest, or upon him as owner of it, should be taken to have been expended by him wholly and exclusively for the purposes of his trade. LORD SUMNER held that where the whole and exclusive purpose of the expenditure is the purpose of the expender's trade, and the object which the expenditure serves is the same, the mere fact that to some extent the expenditure

enures to a third party's benefit, such as that of the publican, or that the brewer incidentally obtains some advantage, say in his character of landlord, cannot in law render the expenditure inadmissible as not being wholly and exclusively laid out for the brewer's trade.

Repairs.—The tenant was legally bound to repair, but as a matter of commercial expediency it was found to be advisable for the landlord to repair in order to avoid loss of tenants, etc. Rule 3 to Case 1 of Schedule D (p. 81) provides that deduction for repairs is only in respect of premises "*occupied* for the purpose of such trade," but LORD LOREBURN held that this only applied to the case of a man so occupying, and that the brewer does not occupy a tied house, therefore the Rule *does not apply at all*, but the repairs are determinable, as an allowance, by the general provisions allowing deduction of expenses "wholly and exclusively" laid out for the purposes of the business.

In allowing deduction of repairs *Brickwood and Co.* v. *Reynolds* (1897) (p. 111), was overruled.

Difference between Rents received and Schedule A.—EARL LOREBURN stated that on ordinary principles of commercial trading the loss arising from letting tied houses at reduced rents was obviously a sound commercial outlay, and, therefore, allowable. LORD ATKINSON pointed out that under *Russell* v. *The Town and County Bank* (1888) (*a*), a trader who owns and occupies premises in which he carries on his trade is entitled to deduct the Schedule A, and that if the houses had been occupied by a manager instead of a tenant there could have been no question of non-allowance, but that there is no real difference in principle between the case of a manager and a tenant, as the brewer ascertains his profits in the same manner, *i.e.* by deducting from the receipts the cost of earning them. With the manager, part of the cost is salary, and possibly commission, while with the tenant it is the difference between rents received and Schedule A or rents paid. "For the purpose of striking the balance of profits and gains, the

(*a*) 13 App. Cas. 418; 2 Tax Cas. 321.

two cases are in principle indistinguishable." LORD PARKER ruled that the Schedule A to be deducted is not the *net* Schedule A, *i.e.* after reduction for repairs, but the gross Schedule A. The Case Stated specifically referred to the *net* Schedule A, and the judgment of the other Lords allowed merely the "Schedule A," which would presumably be the *net* Schedule A, as claimed under the case, and which would be consistent with equity, as allowance of full repairs and of the gross Schedule A—which is the assessment under that Schedule on which tax has been paid, *plus* the repairs—would give a double allowance for repairs. In practice, however, deduction of the *gross* Schedule A is not questioned. His Lordship stated, that in default of statutory provision to the contrary, the *gross* Schedule A should be adopted, and he held that sec. 9 of the Finance Act, 1908, which provides that the deduction for the annual value of premises *used for the purposes of the trade* shall not exceed the *net* Schedule A, was inapplicable, as the premises were not used for the purpose of the brewing business within that section which refers to premises in the possession of the trader.

Fire and Licence Insurance Premiums and Rates. LORD LOREBURN allowed these items "upon the same grounds as repairs."

Cases.

Premiums for Leases.—*Watney* v. *Musgrave* (1880) (*z*).

The cases bearing on "tied" house deduction are of a particularly conflicting nature as regards the dicta delivered. *Watney* v. *Musgrave* (1880), referred to at p. 84, was the origination of the "tied" house question, and the dicta therein has been subsequently discredited. The conditions in the brewing industry as regards "tied" houses were, at that date, less predominant and the case involved the question of deductibility on account of gradual exhaustion of premiums paid for leases of Public Houses for letting to "tied" tenants,

(*z*) 5 Ex. D. 241; 44 J. P. 268; 49 L. J. Ex. 493; 42 L. T. 690; 28 W. R. 491; 1 Tax Cas. 272.

and was decided in favour of the Crown. The following example given in the case shows the effect of the premium:—

The appellants had recently bought the lease of a Public House for 30 years, for which they paid a premium of £1300, and covenanted to pay the landlord a rent of £105 a year. Such lease contained the usual covenants for the lessees to repair, &c. The appellants let such Public House to a tenant, who under his agreement is bound to buy of the appellants all beer to be sold in the house, and assuming that their gross profit from such sale would amount to £60, which profit they could not have made unless they had expended £1300 in purchasing the lease, they claimed that the balance of profits and gains on which they were to be assessed should be less than that sum by £43, being the portion of the said sum of £1300 which had been exhausted during the year by reason of one year of the term having run out, namely, one-thirtieth of the said sum of £1300. In the assessment to the income tax the £60 profit from the sale of the beer was included.

The dicta of Kelly, C.B., is given at p. 84.

Hawkins, J., held that the house was distinct from the trade which consists of manufacturing and selling the beer to the "tied" customer, and that deductible expenses are strictly incidental to production, but he admitted that the costs of conveying the beer to the customer might be deductible, as if the customer fetched the beer from the brewery the price charged to him would be less than if the beer were delivered at the customer's place of business.

The above case, owing to the adverse comments on it in subsequent cases (see p. 85), is of no material support, although it has been extensively relied upon by Surveyors of Taxes on appeals before the Commissioners, and in the dicta of Mr. Justice Hawkins it is stated that "The trade consists to the brewer in manufacturing the beer, in selling it to the customer"—but cognizance was not taken of the fact that the expense in question was *necessary* to the

acquirement of the customer, as if Watney's had not purchased a particular house another brewery would have stepped in, thus Mr. Justice Hawkins' own dictum that the trade consists partly and necessarily of selling is contrary to the decision of the case.

(See *Gillatt and Watts* v. *Colquhoun*, at p. 132.)

Losses on Loans.—*Reid's Brewery Co., Ltd.* v. *Male* (1891) (*a*). The company made loans to customers on the security of the Public Houses, and if the security did not realize the amount of the loan the company wrote off the loss as a bad debt. It was held that the amount of such loss formed a deductible expense.

> POLLOCK, B.: "A question has arisen as to whether this money-lending business is to be considered as an independent business or as part of the business of the brewers. If it had been or if it is a separate business seems to me to be immaterial, because I think it would be included within the provisions of sec. 101 of the Income Tax Act, 1842, and that the Appellants would be entitled to deduct the profits acquired in one of the concerns and set them off against the excess of the losses sustained in the other concerns, but to my mind this really is one business. I do not think anybody who reads this case and is at all acquainted with the custom of brewers in large towns can suppose that this particular firm or company carry on business as money-lenders only; but what they really do is to carry it on as an adjunct, ancillary to and a very advantageous adjunct to their business as brewers.
>
> "I think myself it would be a fallacy to call this money . . . capital invested.
>
> "It is capital used by the Appellants, but used only in the sense that all money which is laid out by persons who are traders, whether it be in the purchase of goods be they traders alone, whether it be in the purchase of raw material be they manufacturers, or in the case of money-lenders, be they pawnbrokers or money-lenders, whether it be money lent in the course of their trade, it is used and it comes out of capital, but it is not an investment in the ordinary sense of the word." (See also p. 84, as to Baron Pollock's disapproval of *Watney* v. *Musgrave*.)

Damages.—See p. 86.

(*a*) 2 Q. B. 1; 55 J. P. 216; 60 L. J. Q. B. 340; 64 L. T. 294; 39 W. R. 459; 3 Tax Cas. 279.

Repairs.—*Brickwood & Co.* v. *Reynolds* (1897), C. A. (*b*). This case has been of considerable moment but was overruled by *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1915) (p. 104). A deduction in respect of the excess of the cost of repairs of a "tied" house over the one-sixth allowed under Schedule A is inadmissible. The question was subsequently altered by sec. 9 of the Finance Act, 1898 (p. 104), which restricts the deduction in respect of Annual Value to the *net* Schedule A assessment leaving the *whole* cost of repairs to be dealt with under Schedule D.

An important point in connexion with this case is that the repairs were executed indifferently to the business parts of the house, and the living quarters of the tenant (see p. 106), and a further vital factor in this extensively relied-upon case, is that no distinction from *Watney* v. *Musgrave* could be found by Mr. Justice Ridley, and the adverse judicial opinions on the latter (*ante*) weakened the authority of *Brickwood & Co.* v. *Reynolds*.

Baron Pollock stated that:

> "Before you can get at the profits you must look at the whole that precedes the making of the profits, which is connected with the expense of producing the article, and also the expense of distributing and keeping the accounts and other expenses which are necessary for the purpose of a trade or manufacture."

This dicta assumes that a "tied" house is the limit of distribution by the brewer, just as a retail shop would be the limit in general trades, but the "expense of distributing" necessarily covers the expense of acquiring the power to distribute, or, in other words, all expenses necessary to secure the custom of the tenant.

Ridley, J., could not distinguish the case from *Watney* v. *Musgrave* (p. 108).

Smith, L.J., agreed with the statement of Hawkins, J., in

(*b*) [1898] 1 Q. B. 95; 62 J. P. 51; 67 L. J. Q. B. 26; 77 L. T. 456; 46 W. R. 130; 14 T. L. R. 45; 3 Tax Cas. 600.

Watney v. *Musgrave*, that the trade of the brewery and the trade of the Public House are distinct. His Lordship further stated that the requirement of Rule 3 to Case 1 of Schedule D, "any sum expended for repairs of premises occupied for the purpose of such trade" clearly meant occupied by the person assessed for the purposes of his trade.

> "It is impossible in my judgment in this case, after hearing the facts, to allege that the whole of this money for repairs of this public-house was laid out exclusively for the trade of the brewer; it was laid out for many other things too."

Mr. JUSTICE RIDLEY was of the opinion that it was "startling . . . to see how a contrary decision . . . can be supportable without carrying us far away from anything in reason," and he formulated a comparative example of a brewery company, having spare capital, and deciding to build a small town round the brewery, and tie the tenants to purchase beers solely from the brewery. There would, in his opinion, be just as much occupation by the brewery as in the case of "tied" houses, and the motive of the expenditure would be the same. There is, however, a vital distinction, as the said houses would obviously, quite apart from the trade in the brewery products, not only be self-supporting, but yield a profit, and command practically open-market rents, whereas with "tied" houses a nominal rent is all that can be obtained, and they do not therefore in themselves yield a profitable return.

The case of *Brickwood & Co.* v. *Reynolds* has been a strong argument as being binding against allowances for repairs of "tied" houses, but in *Smith* v. *Lion Brewery Co., Ltd.* (*post*), LORD ATKINSON, in referring to a dicta in *Brickwood & Co.* v. *Reynolds*, that the repairs being executed indifferently to the business parts and living quarters of the tenant were not "wholly and exclusively" laid out for the purpose of the brewers' trade (within Rule I. to 1 and 2 Cases, Schedule D), stated that "It is clear, therefore, in my view that it was not expressly decided in this case that the

money expended on the repairs executed on the portions of the houses used for trade purposes could not be deducted."

Compensation Levy.—*Smith* v. *Lion Brewery Co., Ltd.* (1911), H. L. (*c*). This case, which determined that a deduction could be made in respect of the legally compulsory Compensation Levy under the Licensing Act, 1904, cannot be cited as a strong comparative case against the Crown, owing to the diversity of judicial opinion, but it is of particular importance owing to the many and extensive dicta on the "tied" house question. The Divisional Court refused the deduction, the Court of Appeal allowed it (KENNEDY, L.J., dissenting), and the House of Lords sustained the judgment of the Court of Appeal, the opinions being equally divided.

The findings in this case occupied a most important position in the decisions, and the Commissioners found that the Company :

> "Are as part of their business and as a necessary incident to the profitable exploitation of such business, the owners of certain freehold licensed premises and also lessees of other licensed premises, all of which premises have been acquired by the Respondents and are held by them in the course of and solely for the purposes of their said business. The said premises are let by the Respondents to tenants who covenant to deal only with the Respondents in the way of their business, and in consideration thereof and the purchase of beers from the Respondents they pay a much less rent than the annual value of the premises would warrant. By these means and the possession and use of the said premises which are employed by the Respondents as substantially part of their plant or outfit necessary to carry on the business profitably the Respondents are enabled to earn and do earn profits upon which they pay the income tax and which without the said premises and their use in and for carrying on their business would be much less in amount.
>
> "The profits of the Respondents have always been greatly increased by reason of the employment and use of such premises in and for the purposes of the Respondents' business, and to enable the Respondents to earn the profits upon which they

(*c*) [1909] 2 K. B. 912 ; 73 J. P. 447 ; 78 L. J. K. B. 1089 ; 101 L. T. 145 ; 53 Sol. Jo. 696 ; 25 T. L. R. 748 ; 16 Manson, 326, C. A. ; affirmed [1911] A. C. 150 ; 80 L. J. K. B. 566 ; 104 L. T. 321 ; 27 T. L. R. 261 ; 5 Tax Cas. 568.

are assessed to the Income Tax the possession and employment as aforesaid of such premises are essentially necessary, and except for the purposes of and employment in their business of such premises, the Respondents would not possess them. They do not possess them as investments or for the purposes of investments. If any house loses its licence the Respondents as soon as possible get rid of it."

In the Divisional Court Mr. JUSTICE CHANNELL mentioned that *Watney* v. *Musgrave* (*ante*) contained observations which would not bear investigation (although the actual decision was right) and that:

"The expenses necessary to sell it and exclusively for the purpose of selling it are undoubtedly deductible. If a brewer sets up a depôt at a distance from his main brewery for the purpose of increasing his sales, the annual expense of that depôt is to my mind clearly an expense deductible as exclusively incurred for the purpose of his business of selling beer.

"I think that whatever is the annual expense to the brewer of having those tied houses is an expense incurred for the purpose of the sale of his beer, exactly as the expense of a depôt or the expense of an agent for selling the beer is an expense of his business."

The decision of Mr. JUSTICE CHANNELL was against the company as, in his opinion, the payment was not exclusively for the brewer's trade.

"He (the brewer) sells those 100 barrels of beer at a wholesale price. His object is to secure that customer and to sell that 100 barrels of beer, and, as I have already said, so far as he incurs annual expense in order to sell that 100 barrels of beer I think he is entitled to deduct it. The tenant is there, and the tenant who buys the 100 barrels of beer at wholesale prices sells them at retail prices. In all probability he sells other things besides the beer; he may sell spirits and other things. His trade is a different trade. It is selling over again what he buys from the brewer, and selling other things besides."

It seems difficult to reconcile the above dicta with the facts of the matter, as it is admitted that the annual expense to the brewer of selling the beer is deductible, thus inferring, by the non-allowance, that the customer would still deal with the particular brewer if the tie were non-existent, a fallacy which

is explained by the fact that the charge to a "tied" tenant is higher than to a "free" tenant.

In the Court of Appeal the MASTER OF THE ROLLS considered the payment in question to be essential to the earning of the profit, and he pointed out that the tenant could deduct his share of the Compensation Levy, and that every argument which goes to show that the retail seller of beer can deduct his share, applies with equal force in favour of the wholesale seller.

FARWELL, L.J., agreed with the allowance of the deduction in question, but admitted that the case was a difficult one, and said that:

> "The Income Tax Acts expressly forbid certain deductions which might be thought allowable before the true profits of a trade could be ascertained, but with this exception 'profits of a trade' bears its ordinary signification as used by business men in business.
>
> "I cannot agree with Mr. JUSTICE CHANNELL'S statement that the payment is made for the purpose of insuring against the loss of the tenant's trade in which the brewery company is only indirectly interested. The payment is made because the legislature has compelled it as a term of the ownership of a licensed house, and it is worth the while of the company to acquire houses and pay it in order to increase their own sales of beer in which they have a direct interest, and out of which the Crown claims a share. The tenant makes his own profit by his retail trade, the brewer makes his by his wholesale trade; the levy must be paid by each in his due proportion to enable those profits to be made, and out of each set of profits the Crown claims a share, and must allow proper deductions accordingly."

KENNEDY, L.J., held that the levy was primarily and partially a payment for the maintenance of the trade of the publican.

In the House of Lords the LORD CHANCELLOR was against the admission of the deduction, but held that on the findings of the case stated, it must be taken that the company owned the "tied" houses simply and solely to obtain a market for their beer, and it was essential to their trade to own them.

His Lordship pointed out that deduction was sought from

the profits of the wholesale trade of manufacturing and selling *beer*, whereas the levy was expended to insure against loss of the retail trade, which, under the licence, was that of selling *beer, wines and spirits*. He did not think the levy was "wholly and exclusively" laid out for the brewer's trade which had nothing to do with wines and spirits.

> "In the second place it is only in the character of owners of a house that the Lion Brewery Company can be called upon to pay this levy at all. The share of the levy which they have to pay is proportioned to the interest they have in the house, and has no relation to their wholesale trade of manufacturing and selling beer. They pay income tax for the house under Schedule A, not under Schedule D, and I cannot perceive how they can claim a deduction in the terms of Schedule D in respect of a property which is assessed under a wholly different Schedule. You cannot by saying that a man carries on the business of owning house property shift the method of assessing that property for income tax from Schedule A to Schedule D and still less, in my opinion, can you claim to take credit, by way of deduction from an assessment upon trade, for moneys paid in respect of ownership of landed property which is assessable under a different Schedule altogether."

EARL HALSBURY was in favour of the allowance, contending that the *facts* found in the case were binding on the Court, and he did not think:

> "it is competent for us to go out of what has already been determined by the tribunal which the legislature has considered sufficient to determine the form in which such a question, if it arises, should be determined." "Under these circumstances it appears to me that it would land us in a very serious difficulty if in any question like this we were called upon ourselves to do that which is the action of a business man, to find out what exactly he may or may not treat as part of the adventure, part of that which is necessary to be carried on. As to that matter (we being by the Act of Parliament confined to expressing our view whether by law such and such a deduction could possibly be made), I am of opinion that that is beyond us, and it has been decided for us by a competent tribunal. I decline, therefore, to enter into that question."

LORD ATKINSON decided in favour of allowing the deduction, and mentioned that:

> "the findings of fact set out in the case stated are matters vital for consideration, if not conclusive, of the question raised,"

and that under the findings "it would appear to me impossible to contend, at least successfully, that these licensed premises were not acquired and let under the terms of these leases solely, wholly, and exclusively for the purposes of the trade of the Respondents as manufacturers and vendors of beer. They acquired the houses in order that they might let them to persons who must needs buy beer and they bind those persons to buy from them the beer needed."

"And it certainly would appear to me that where a trader deliberately acquires any particular interest in the licensed premises, wholly and exclusively for the purpose of using that interest to secure a market for the commodities he manufactures, the money he must expend to satisfy the charge thus imposed is necessarily disbursed wholly and exclusively for the purposes of this his trade."

"Again, it is urged that the landlord pays his contributions as landlord and because of his proprietary interest in the premises, and not as trader, since he would be equally liable to it whether he traded or not. That, no doubt, is so, but in the present case the Company have become landlords and thus liable to pay the charge, for the purpose solely and exclusively of setting up the tied house system of trading. If the Company took under lease a plot of land to enlarge their brewery or took, similarly, premises in which to establish a depôt to sell their beer through an agent, the same criticism might be applied with equal force to the payment of the rent reserved by the lease. They would pay it as lessees, not as brewers. They would pay it whether they continued to brew or not. Yet under the provisions of the very rule relied upon in this case, they would be entitled to deduct the rent from the profits earned, and that, too, utterly irrespective of whether the receiver of the rent used it to pay for his support or for his pleasure, or even to set up a rival brewery."

His Lordship pointed out that the compensation levy is an expenditure which must be incurred in order to earn the receipts (which after the due deductions have been made, form the balance of the profits assessable to Income Tax), and may, therefore, be deducted.

The contention that the brewers' share of the levy cannot be held to be wholly and exclusively laid out in the interest of the trade in beer alone, as the tenant may sell wine and spirits which he is not "tied" to purchase from the particular brewer, was disapproved by his Lordship, who held that it mattered not to the brewer in respect of what trading, in addition to

the trading in beer, the liability for the entire contribution is incurred, as, the brewers deliberately assuming liability for the landlord's share solely to get a market for their beer, the payment of the levy is a disbursement made wholly and exclusively for the purposes of their trade as vendors of beer. Unfavourable comments were passed by LORD ATKINSON on the reliance to be placed on *Brickwood & Co.* v. *Reynolds* in regard to its bearing on the present case. (See p. 112.)

The lack of unanimity in the case was pointedly referred to by LORD SHAW OF DUNFERMLINE, who stated that—

> "the opinions which your lordships have just delivered show such a radical and complete difference of opinion that my own position is one of great difficulty. My two learned brethren who have preceded me have expressed diffidence in differing from the LORD CHANCELLOR. My Lords, I express diffidence in differing from any one of your lordships and in expressing an opinion either on the one side or on the other."

His Lordship expressed the opinion that the decision must proceed upon the facts as set forth in the case, and further that in the interpretation of the words "wholly and exclusively laid out or expended for the purposes of such trade," the words "purposes of such trade" do not mean the motives animating the minds of the traders, but mean the purposes to and for which the money is applied and expended.

His Lordship was of opinion that the levy was expended for securing:

(*a*) the retailer against discontinuance of his trade, and

(*b*) the owner against discontinuance of the premises as premises in which a retail trade could be carried on, the payment therefore being for the purpose of preserving the owner's rights as owner.

> "In the argument I put the case of an on licence under which the profit of the trade in wine, in beer, and in spirits was fairly equal, one-third profit attaching to the retail sale of each of the articles. It hardly appears to me to be possible that a payment made even on the assumption that it was for

> the purpose of keeping up the brewer's beer connexion with the premises, can be said to have been wholly applied to and expended upon that, seeing that this formed only one-third of the business, and the other two-thirds of the interests covered by the payment had reference to a trade in other articles. Under the statute, however, a deduction, to be legitimate, must be both exclusively and wholly for the purposes of the Appellants' brewing trade; whereas, even on the facts in the present case, it must be conceded that the payment was, in any view, partially for keeping up a trade in articles not supplied by the brewer."

His Lordship also stated that the payment was made *qua* owner not *quâ* trader.

Arguments for and against Deduction.—Although *Smith* v. *Lion Brewery Co., Ltd.*, produced a diversity of arguments, the length of the judgments in the progress to the House of Lords evinced considerable contentious points both in favour of and in opposition to the allowance of expenses of "tied" houses. The principle underlying the admission of these expenses is one which permeates the Income Tax incidence, and the arguments, apart from the opposing and contradictory interpretations of the words "wholly and exclusively" in Rule I. to 1st and 2nd Cases, Schedule D both for and against, are outlined hereunder.

For Allowance.—

(1) The facts found in the case stated.

(2) That the wholesale seller of beer has equal rights with the retail seller.

(3) That the possession of "tied" houses results in increased profits which are taxed, and that such increased taxed profits could not be earned without the "tied" houses, and that therefore a compulsory expense without which the particular portion of the profits could not be obtained, should be admitted as a deduction in computing assessable profits.

Against Allowance.—

(1) That the expense is an insurance against the loss of the licence, and therefore of the trade of the house, which trade is that of the tenant.

(2) That the licence covers wines and spirits, which are not "tied" for purchase from the owner of the house.

(3) That the brewer holds the house in the capacity of landlord, not of trader.

(4) That a non-trading landlord would not be able to deduct the expenses from profits of trade, and that the payment would fall on the landlord whether he were a trading landlord or not.

(5) That diminution of rent by the tenant's deduction of the Compensation Levy is too remotely connected with the earning of the brewer's profits.

Usher's Wiltshire Brewery Co., Ltd. v. *Bruce* (1915), p. 104, has disposed of the opposition to allowance by negativing the previously prevalent arguments.

Call of Licences, &c.—The expenses involved in "call of licences," and other *unsuccessful* applications for new licences, are inadmissible as a deduction by *Southwell* v. *Sarill Bros., Ltd.*, [1901] (*d*), and it appeared from the case stated that when the applications were *successful*, the cost was treated as a capital expense, being added to the cost of the new house. The expenses were incurred in connexion with the "managed" and "tied" houses of the company, and were expended in connexion with applications made by the company to the Licensing Justices for the granting of new and additional licences. The disbursements consist of law costs, printing, and advertising, preparing petitions, serving notices, court fees, surveyors' fees, and payments for "call of licences." The latter represent payments made to owners of Public Houses for the right to call for a surrender of the licences attached to such houses, in the event of such licences being required by the Licensing Justices to be surrendered before the grant of a new licence for a new house.

KENNEDY, J.: "It is a sum which may be treated as an investment; not an investment of a sum out of profits which

(*d*) 2 K. B. 349; 65 J. P. 649; 70 L. J. K. B. 815; 85 L. T. 167; 49 W. R. 682; 17 T. L. R. 513; 4 Tax Cas. 430.

they have realized, but an investment which goes to capital, and it seems to me that if, as they admit, they do not feel themselves justified in treating in the same way their expenditure, which is an expenditure for obtaining licences of houses where it is successful, they cannot claim that as a deduction. . . . Cases have been cited to us, certainly, which have shaken the view which on first looking at the case I should have been inclined to take, namely, . . . that the expenditure was incurred by the Respondents in their trade as brewers. There seems to be, at any rate, considerable doubt as to that question."

PHILLIMORE, J., could not see why the expenses of *unsuccessful* applications should be allowed when it was not contended by the company that the expenses of *successful* applications should be allowed.

"I only want to guard myself further, by saying that without deciding it, because we have not heard the matter fully argued—at any rate, for the Crown—I should have thought, in the case of brewers dealing in tied houses, the expense of the upkeep of licences, and the expense of procuring the renewal of licences, was a legitimate trade expense. However, we have not heard the Solicitor-General fully upon that, and, therefore I give no decision."

(See p. 307, for specimen Brewery Company's adjustment for Income Tax purposes.)

BENEFIT MATCHES.

The sum derived from a benefit match given in aid of a footballer is not assessed in practice.

BROKERS' COMMISSION.

Commission paid to brokers in connexion with the raising of debentures is inadmissible: *Texas Land and Mortgage Co.* v. *Holtham* (1894). (See "Debentures," p. 158.)

BUILDING SOCIETIES.

The Schedule D assessment on Building Societies presents some peculiar characteristics, and, in practice, the assessment is governed generally by arrangements made by the Board of

Inland Revenue, and not objected to by the Commissioners (*post*).

There is not a uniformity of constitution in regard to Building Societies, and a distinction may be made as follows:—

(1) Permanent Societies having an annual distribution or allocation of profits, in the form of either interest, dividends, or bonuses (see *post*).

(2) Terminable Societies having a distribution of profits at the end of their existence. (See *post.*)

Cases.—

In *Middlesborough, &c., Benefit Building Society, ex parte Wythes* (1885) (*e*), the Society made advances on mortgage of property, and such advances were repayable over a term of years by instalments covering both principal and interest. It was held that Income Tax was deductible from so much of the instalments as represented interest, if the latter could be ascertained.

In *Leeds Permanent Benefit Building Society* v. *Mallandaine*, [1897] C. A. (*f*), advances were made to members only, on the security of property.

The members held one or more shares, or one or more fifth parts of a share, the shares being divided into two classes:

(*a*) Investors' shares, which are again divided into subscription and paid-up shares.

(*b*) Borrowers' shares.

Another class of persons with whom the Society had dealings were depositors who were not members but creditors.

Out of the money received by the Society in respect of Investors' Shares and Deposits, advances were made to borrowers, and were repayable at the rate of 2*s.* 6*d.* per share,

(*e*) 53 L. T. 492.

(*f*) 2 Q. B. 402; 61 J. P. 675; 66 L. J. Q. B. 813; 77 L. T. 122; 3 Tax Cas. 577.

whether large or small. It thus arose that the repayments consisted partly of capital and partly of interest. If the share was a large one, the repayment was spread over a number of years, thereby causing the first instalment to be practically all interest, whereas with a small loan the proportion of interest would be less. As repayment proceeded, the interest portion would decrease, owing to part of the capital being paid off, and the capital portion would increase accordingly.

The income of the Society was derived from charging a slightly higher rate of interest to borrowing members than was granted to depositors, or, generally speaking, to investors. The difference between the percentage paid to depositors and investors, and that received from borrowers was as little as by calculation it was estimated would afford the necessary amount to carry on the business of the Society, such, *e.g.* as for office and staff expenses. A surplus accumulated from time to time out of the fund so brought into existence, beyond the expenses of carrying on the business, and this surplus was from time to time divided among the members.

"Interest" forms a special subject of assessment under sec. 2 of the Income Tax Act, 1853 (see p. 262).

The Society refused to allow the borrowers to deduct tax from the interest included in the repayments on the grounds that the interest could not be distinguished, and was not "annual interest" within sec. 40 of the Income Tax Act, 1853, which authorizes deduction of tax in respect of annual interest.

It was held that the Society was liable to assessment on the interest received from borrowers, whether it be annual or not.

Wills, J., decided that the interest was not yearly interest, but was a subject of taxation under Schedule D of the Income Tax Act, 1853.

Grantham, J., stated that:

> "If they have chosen to arrange with their borrowers that the payments should be in such a way that the borrowers could

treat their payment as an annual interest, why then they would be able to say as a mortgagor is able to say, 'Now I have allowed this to my borrowers and they would not be obliged to pay it twice over'; but they have not done so, and they say here in terms, 'We decline to allow our borrowers to charge us because we say it does not come under the rules under which they are entitled to deduct the interest paid to us.' That being so it is exactly like a profit. It is exactly like a business, call it what you like, but it comes under the term interest."

The case went to the Court of Appeal, and it was argued for the Society that the properties purchased nominally by the borrowers were mortgaged to the Society, which thereby invested its money in property, and that as the properties had been taxed under Schedule A, the whole property of the Society had been taxed. The assessability of the Society on the full amount of interest was upheld, and the MASTER OF THE ROLLS stated:

"They (*the borrowers*) borrow so much money upon a contract, made by these Articles of Association, that they will, as long as that money remains lent to them, pay interest on it at the rate of 3½ per cent. If they borrow £100, and during the year they pay off £50, the rate of the interest is not altered a bit. It is the sum on which that interest at that rate is to be paid which is altered; instead of having to pay 3½ per cent. on £100, they have to pay 3½ per cent. on £50. But the whole of that transaction with regard to the money is a pure transaction of money lent upon the terms that, as long as it or any part of it is unpaid, interest at 3½ per cent.—which means 3½ per cent. per annum—at that rate, is to be paid. Then by way of collateral security—mind, not interfering with the contract at all; no part of the contract; a wholly different contract—these people mortgage their premises."

"The plain construction of this Statute is what it plainly says that, if any person lends money, and, in respect of that, obtains interest, that interest is a thing which can be taxed under these Income Tax Acts, and that these people who get £60,000 a year are taxable in respect of that money—of course I mean so much of it as is interest, notwithstanding the supposed difficulties, which, in the hands of any man competent to calculate, will not be difficulties which will last a quarter of an hour."

A. L. SMITH, L.J., in referring to the Society's contention that the only matters assessable were profits and gains

derived in the way of business, agreed with the decision in *Clerical, Medical, and General Life Assurance Society* v. *Carter* [1889], C. A. (*g*), that interest was a separate subject matter, on which Income Tax could be levied.

RIGBY, L.J., in dealing with a contention of the Society that exemption is secured by reason of the charitable nature of the Society, stated that "I think that is driving the Acts to an absurdity that we are not bound here to give way to."

Arrangements.—The Board of Inland Revenue has prescribed the following alternate arrangements for assessment:—

ARRANGEMENT A.

1. All interest to be exempted where the borrowing member is exempt by reason of his total income from all sources not exceeding £130, the society undertaking to see that each borrower makes the usual claim to the surveyor for the district in which he resides, and to afford facilities to the surveyor or surveyors for the requisite verification of the claims.

2. Where the borrowers are not so exempt, the properties on which the interest is secured by mortgage, or otherwise, to be retained in charge according to their respective annual values, and the society to allow the borrower to deduct the tax applicable to the interest.

3. All property in the society's hands as mortgagees in possession to be exempted, except as to ground or lease rents, if any.

4. The society to furnish a statement, to be verified by the surveyor once a year, of the interest paid or credited to depositors and members whose incomes exceed £130 a year, from whom the society would have the right to deduct the tax, whether the society exercised the right or not.

5. The society to furnish a list of the interest received

(*g*) 22 Q. B. D. 444; 53 J. P. 276; 58 L. J. Q. B. 224; 37 W. R. 346; 2 Tax Cas. 457.

from the borrowers to whom the society has allowed the tax, with all necessary particulars of the properties assessed, and vouchers annexed in the shape of certificates of deduction of the tax on Form No. 185.

6. Where the total interest received (paragraph 5), on which the society has allowed the tax, exceeds the total interest paid or credited (paragraph 4), on which the society has the right to retain the tax, the society to be repaid the duty on the difference, and where the converse is the case, that is, where the tax which ought to be retained by the society exceeds the tax allowed by the society, the society to render a return of the difference for assessment under Schedule D.

ARRANGEMENT B.

1. The society consents to be directly assessed under Schedule D upon the amount credited in the year preceding the year of assessment for, or in respect of, dividends on shares, bonuses, and deposit interest. One-half of the total amount to be charged with Income Tax and one-half allowed to cover exemptions (*h*).

In consideration of such direct assessment:—

2. All property in the society's hands as mortgagees in possession to be exempted, except as to ground or lease rents, if any.

3. A borrower whose total income from all sources does not exceed £130 is not to be charged for mortgage interest; if charged the duty assessed in respect of the mortgage interest is either to be allowed as a double assessment or repaid by the Board.

4. A borrower, not entitled to exemption, to be repaid by the Board such portion of the duty charged on his property as is applicable to mortgage interest. Application for repayment to be made to the Board, and supported by a certificate (*on Form No.* 13, *see* p. 128) from the secretary of the society as

(*h*) In the case of societies which entered into the arrangement before 23rd February, 1898, the amount paid is the basis of the assessment.

to the amount of mortgage interest paid for the year of assessment, or the amount of interest so certified may be allowed from the assessment.

5. Investors and depositors not to be charged for the dividends or interest they receive; if charged, on proof thereof, to be entitled to relief.

6. When required, any society accepting this arrangement to permit any duly appointed officer of the Board to test the accuracy of the amount returned for Schedule D assessment, or to verify the correctness of any certificate given under the arrangement.

Ballot and Sale Societies.—In the case of Ballot and Sale societies, including Starr Bowkett and similar societies, the only liability is for the annual profits from the sale of Appropriations, Premiums, and Bank or other untaxed interest. The assessment is further restricted to the proportion of these profits attributable to members who are not exempt, owing to their total annual incomes exceeding £130.

The following concession of the Board of Inland Revenue may be applied if the society so desires:—

1. As a concession the working expenses of these societies may be allowed in computing the liability under Schedule D, provided that the whole of the receipts, including premiums, interest, fines, fees, subscriptions for working expenses, and any other profits are brought into the computation.

2. No part of the payments made by borrowing members to the societies is to be allowed as a deduction from the Schedule A assessments.

3. A proportionate allowance in respect of the profits of exempt shareholders may be made if full particulars be furnished to the Surveyor to enable him to make this adjustment.

Terminable Societies.—Terminable societies (*ante*) may be assessed on the same principle as Ballot and Sale societies (*ante*), or under a modified form of Arrangement B (*ante*),

including Numbers 2 to 6 thereof, and the assessment would be either—

(*a*) Based on one-half of the dividends, bonuses, and interest credited each year plus one-half of the undivided profit of the year, or

(*b*) In accordance with No. 1 of the concession to Ballot and Sale societies (*ante*).

Set-off.—A set-off is allowed, of the income derived from all taxed investments, against the liability otherwise assessable, of a Building Society which has been admitted to Arrangement A or B. If the taxed income of the society, including its income from investments, exceeds the amount of such liability, the tax applicable to the excess will be repaid.

Friendly Societies.—The Arrangements A and B are also applicable to Registered Friendly Societies and Industrial and Provident Societies acting as Building Societies.

Abatement or Exemption.—When a person holding an advance from a Building Society claims abatement or exemption (see p. 332), it is necessary to arrive at the total net income from all sources, and therefore determine the portion of the repayments to the society which represents interest. The following form under Arrangement B is completed by the secretary of the society.

No. 13. Share No.

BUILDING SOCIETIES (ARRANGEMENT B).

INCOME TAX.

Name of Society.
Address

I hereby certify that Mr.
of
has, during the twelve months ended 191
paid to this Society the sum of pounds shillings,
and pence (£ *s.* *d.*) for Mortgage Interest on
property known as under :

Parish
Street
No. of House

I further certify that the Income Tax chargeable under the terms of Arrangement B has been, or will be, paid over to the Revenue.

Date 191 Secretary.

The following notice is attached to the above form :-

The following relief is afforded to Borrowing Members under the above arrangement :—

(1) A Borrower whose total income from all sources does not exceed £130 per annum is not to be charged for Mortgage Interest. If charged, he should apply to the Local Surveyor of Taxes for relief from the Assessment, or, if the duty should have been paid, for a Form of Claim of Repayment.

(2) A Borrower not exempt from Income Tax is to receive an allowance from the property tax assessment in respect of the duty on the amount of the Mortgage Interest. To obtain this allowance he should, before payment of the duty, forward this Certificate, together with the Collector's Demand Note (see p. 377) to the Surveyor of Taxes for the district in which the property is situated.

Or, if the allowance from the assessment is impracticable, the duty on the Mortgage Interest will be repaid by the Board of Inland Revenue, upon a written application to the Secretary, Inland Revenue (Claims Branch), Somerset House, London, W.C., supported by this Certificate and the Collector's receipt for the duty paid.

BURIAL BOARD.

The surplus of income over expenditure in connexion with a burial ground is assessable. (*Paddington Burial Board* v. *Commissioners of Inland Revenue* (1884), (*i*).)

The sole income of the Board was derived from payments made in accordance with a fixed scale of charges for interments and other fees. Any surplus was applied in aid of the rates. DAY, J., in disposing of the contention that the profits are not assessable, as they go in aid of the rates, stated that once the profits are ascertained Income Tax attaches, and the destination of the profit is immaterial. A further contention that the Board is a "Charity" was dealt with. "I can see no

(*i*) 13 Q. B. D. 9; 48 J. P. 311; 53 L. J. Q. B. 224; 50 L. T. 211; 32 W. R. 551; 2 Tax Cas. 46.

charity of any sort or kind in it. . . . I see no reason whatever why they should be exempted more than any cemetery company or any individual that likes to carry on the business of burying his neighbour."

CANALS.

Canals are assessed under No. III. of Schedule A (p. 55) on the profits of the preceding year, and the assessment is to be made at the head office of the company.

CAPITAL EXPENDITURE.

There are specific legal prohibitions of deduction of capital expenses (Rule 3 to 1st Case, Schedule D) negativing allowance in respect of—

(*a*) Any capital withdrawn.

(*b*) Any sum employed or intended to be employed as capital.

(*c*) Any capital employed in improvement of premises.

Sec. 159 of the 1842 Act limits deductions to such as are enumerated in the Act, and rejects deduction on account of diminution of capital. (See p. 82.)

Sums of the nature of capital are not allowable as deductible expenses, but capital is not a subject of charge, as it is an established principle that capital should not be taxed. This, however, needs qualifying in that many expenses such as those involved in Wasting Assets, and which are ordinary trading expenses from a commercial point of view, form, by their non-allowance, a taxation of capital. A mere description of a sum as Capital or Revenue is not in itself sufficient to constitute that sum Capital or Revenue for Income Tax purposes, and the LORD CHANCELLOR, in *Scottish Provident Institution* v. *Allan*, [1903] H. L. (*k*), ruled that—

> "It is obvious that the mere nick-naming the sum received and ascribing to it, because it is so named, the character of

(*k*) A. C. 129; 67 J. P. 341; 72 L. J. P. C. 70; 88 L. T. 478; 19 T. L. R. 432; 40 Sc. L. R. 605; 5 F. 10 4 Tax Cas. 591.

> capital and not of income, cannot defeat the right of the Crown to have the tax levied upon that which in substance and truth is profit," and LORD DAVEY in the same case stated that "I agree that the mere calling it capital for the purpose of the Inland Revenue Department will not make into capital, that which is essentially and in truth profit."

In *Scoble and others* v. *Secretary of State for India*, [1903] (*l*), the LORD CHANCELLOR further ruled that it was never intended by the Acts to tax capital as income.

It may be urged in arguing a case on the question of whether a particular expense is capital expenditure or not, that the expense does not increase the capital value, but in *Granite Supply Association, Ltd.* v. *Kitton*, [1905] (*m*), it was held that—

> "There are costs that would not properly be set against the income of the year, and which yet may not add to the capital value. Suppose a person is imprudent enough not to insure his premises or his goods, which can be insured, and they are burned down, and he has to replace the building, he could not be allowed to charge the new building against the income of the year."

Definition of Capital.—Capital for Income Tax purposes does not differ from capital for commercial purposes, as was laid down in *English Crown Spelter Co., Ltd.* v. *Baker* (1908) (p. 135), and in *Vallambrosa Rubber Co.* v. *Farmer* (1910) (p. 145).

Wasting Assets.—One of the most important Income Tax cases, affecting the question of deductibility of expenses, is *Alianza Co., Ltd.* v. *Bell*, [1906] (*n*), decided in the House of Lords in 1905. The Company, which was an English one, was formed to work some nitrate deposits in Chili, and when the nitrate is exhausted, the plant, and of course the nitrate, will be of no value.

The Company claimed deduction of a sum of £25,000

(*l*) A. C. 299; 72 L. J. K. B. 617; 89 L. T. 1; 51 W. R. 675; 19 T. L. R. 550; 4 Tax Cas. 618.

(*m*) 43 Sc. L. R. 65; 8 F. 55; 5 Tax Cas. 168.

(*n*) A. C. 18; 75 L. J. K. B. 44; 93 L. T. 705; 54 W. R. 413; 22 T. L. R. 94; 5 Tax Cas. 172.

which had been set aside in the year in question to meet *inter alia* the ultimate exhaustion of the nitrate grounds. The deduction was held to be inadmissible for Income Tax purposes, thus creating in effect a taxation of capital, as if, *e.g.* the deposits were purchased for £100,000 and had a life of four years it would be seen that the disallowance would result in the £100,000 capital being taxed.

The available profit for 1899 was divided by the Company as follows:—

	£	s.	d.
A dividend of 6 per cent. on the share capital . .	60,000	0	0
Redemption of capital account	25,000	0	0
Carried forward to 1900	3,186	12	5
	88,186	12	5

It was contended that nitrate was in the position of raw material which a trader has to purchase in order to work it up for sale, but the Crown urged that the expense was for exhausted capital and prohibited by Rule 3 (*ante*).

In the Divisional Court CHANNELL, J., decided against the Company on the ground that "in the particular Company that I am dealing with this is an exhaustion of capital, and that exhaustion of capital is not a subject for which deduction can be made under the Income Tax Acts."

In the Court of Appeal the MASTER OF THE ROLLS held that the case was concluded by authority and that the Company's contention to the contrary, based on the point that the authority related to Mines under No. III. of Schedule A, and not to Schedule D, was irrelevant, "as the provisions of Schedule D are no more favourable to the appellants than those of Schedule A." The MASTER OF THE ROLLS reviewed some analogous cases as follows:—

> "In *Gillatt* v. *Colquhoun*, (*o*) a case under Schedule D in which a deduction was claimed in respect of the depreciation in value of a leasehold interest by effluxion of time, Mr. JUSTICE A. L. SMITH said, 'it seems to me that in the case of *Coltness Iron*

(*o*) (1884) 33 W. R. 258; 2 Tax Cas. 76.

Company v. *Black*, (*p*) the learned Law Lords undoubtedly lay down that which seems to me to be applicable to Schedule D as well as to Schedule A, namely, that diminishing capital or exhausted capital cannot be brought into your profits and gains when making out your accounts either under Schedule D or Schedule A.' Again in the *City of London Contract Corporation* v. *Styles*, (*q*) another case under Schedule D, the same principle was upheld in the Court of Appeal. The deduction was there claimed in respect of a portion of the sum paid by the Company in purchasing the benefit of certain unexecuted contracts which the Company was formed to take over, and from executing which their profits were realized. The argument there, as here, was, that 'you can use your capital in purchasing contracts from which you derive your annual profits. It is capital to start with, but then you use your capital wholly and exclusively for the purposes of the concern'; to which LORD JUSTICE BOWEN answers, 'You do not use it for the purpose of your concern, which means for the purpose of carrying on your concern, but you use it to acquire the concern.' The deduction was disallowed."

"That the principles governing this question are the same under both Schedules was again asserted by the Scotch Court in *Edinburgh Southern Cemetery Company* v. *Kinmont*" (*r*).

STIRLING, L.J., held that although there was a *primâ facie* reasonable claim the question was concluded by Rule 3 to Case 1 (p. 87), which prohibits a deduction in respect of capital.

His Lordship also cited sec. 159 of the 1842 Act (*ante*), and stated that it is clear that the law does not permit all deductions which a prudent trader would make for the purpose of arriving at his profit. He further mentioned that—

"For the present purpose it is sufficient to say that I am not satisfied that such capital, if any, as may be lawfully paid away by a Company to its shareholders in the shape of dividends, would be regarded by the legislature as an unfit subject for assessment to Income Tax, or would not fall within the prohibited deductions in respect of 'capital withdrawn,' or sums 'employed or intended to be employed as capital.'"

The House of Lords upheld the decision of the Court of

(*p*) (1881) 6 App. Cas. 315; 46 J. P. 20; 51 L. J. Q. B. 626; 45 L. T. 145; 29 W. R. 717; 1 Tax Cas. 287.
(*q*) (1887) 4 T. L. R. 51; 2 Tax Cas. 239, C. A.
(*r*) (1889) 17 R. (Ct. of Sess.) 154; 27 Sc. L. R. 71; 2 Tax Cas. 516.

Appeal and LORD ROBERTSON held that the deduction claimed was capital, which in his opinion was concluded by the findings in the case, and he fully agreed with the Master of the Rolls that the matter at issue was a case of capital being embarked in a wasting subject matter.

Unexecuted Contracts.—In *City of London Contract Corporation* v. *Styles* (1887), C. A. (*s*), the Corporation claimed deduction of a sum of £80,000 in respect of the price paid for unexecuted contracts taken over. The said sum had been written off the Revenue accounts as "amount deducted from purchase account for surplus assets realized, and amount written off goodwill." The Corporation stated that this sum substantially represented a portion of the purchase money paid to Charles Philips & Co., for the purchase of the contracts and business on which the profits were realized. The purchase money was £180,000, and the said business consisted entirely of partially executed or wholly unexecuted contracts.

FRY, L.J., was of the opinion that the sum of £80,000 was "employed or intended to be employed" as capital within *Rule* 3 *to* 1*st case*, *Schedule D*, and therefore inadmissible as a deduction.

Dredging.—The sole means of ingress and egress between the works of Messrs. Vickers, Ltd., and the sea was by the Walney channel, which latter was under the authority of a railway company, and had not been dredged and maintained, so that Messrs. Vickers, Ltd. and the railway company agreed to share the expense of a scheme for making the channel more navigable and for constructing a deep-water berth. Without this work Messrs. Vickers, Ltd. would not have been able to deliver the battle cruiser "Princess Royal." Allowance of the expenses was refused as the outlay affected the business generally by giving a new means of getting to the sea and was, therefore, capital expenditure: *Ounsworth* v. *Vickers, Ltd.* (1915) (*t*).

(*s*) 4 T. L. R. 51; 2 Tax Cas. 239.
(*t*) 3 K. B. 267; 84 L. J. K. B. 1690; 31 T. L. R. 530; 139 L. T. 865.

Advances to another Company.—In *English Crown Spelter Co., Ltd.* v. *Baker* (1908) (*t*), the company required supplies of "blende" for use in its business of zinc smelting, and a new company to supply this blende was formed. Advances were made by the appellant company to the new company, and as the latter was not successful and went into liquidation the amounts due to the appellant company were written off as bad debts. It was held that the advances were investments of capital and therefore not deductible.

The directors of the appellant company passed a resolution to form the new company to acquire certain leases, and the latter company was registered with a nominal capital of £30,000, subsequently acquiring the leases in question. The appellant company subscribed for 8997 £1 shares out of the 10,000 then issued by the new company, and three were taken by signatories to the memorandum; the four directors of the appellant company subscribed for the residue of the said 10,000 shares, viz. 250 each. These directors and the secretary of the appellant company were appointed directors and secretary respectively of the new company. The total amount of blende delivered to the appellant company was of the value of £5826 7*s.* 5*d.*, and the advances made by the appellant company amounted to £44,124 13*s.* 4*d.*, the difference, £38,299 5*s.* 11*d.*, being the amount at issue.

BRAY, J., ruled that it is—

> "perfectly clear from the Act that the Income Tax payer has no right to deduct . . . anything in the nature of capital expenditure . . . What you have to see is whether, in common parlance, it is capital expenditure, that is to say, an expenditure on account of capital—an expenditure which, on the ordinary profit and loss account, would not appear as a debit at all, but would appear as a debit when you are dealing with assets."

Mr. Justice Bray further pointed out that the advances were not against goods to be delivered, but that the new company was in difficulties and the appellant company

(*t*) 99 L. T. 353; 5 Tax Cas. 327.

lent them money. He concluded that this was an investment of capital and not an advance against goods.

The above case is extensively relied upon by Surveyors of Taxes as showing that losses on loans by one company to another are not allowable, but the case does not go that far as it only disallows losses on investments of capital. In *Reid's Brewery Co., Ltd.* v. *Male* (1891) (p. 110), it was held in the Court of Appeal that losses on loans by a brewer to a publican, who was a customer, were deductible, as the loans were not investments but money used in and for the business. Where, therefore, a trader advances money to another trader with a view to increasing the trading profits and not as an investment, any loss is fully allowable as being (*a*) an expense wholly and exclusively laid out for the purpose of the business within Rule 1 (p. 82); (*b*) within *Reid's* case (*ante*); and (*c*) within *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1914) (p. 104), which allowed, in the House of Lords, any expenses *commercially* expedient.

Loss of Capital.—In *Smith* v. *Westinghouse Brake Co.* (1888) (*u*) the Company had expectations of a large foreign trade and opened a manufactory at Paris and fitted machinery. The expectations did not materialize, and eventually the manufactory was closed and portions of the machinery removed to Hanover and London. Subsequently the manufactory was re-opened on a smaller scale and the remainder of the machinery was used therein. The Company claimed to deduct £3000 in regard to the loss arising through a large portion of the original cost of constructing the factory and fitting the machinery, being lost.

It was held that the deduction was inadmissible, as the Company had invested money in what was capital machinery, and on making up their accounts they found that the machinery was worth £3000 less than the original cost, but this sum was a loss of capital, not of profits, and therefore could not be deducted.

(*u*) 2 Tax Cas. 357.

Defective Structural Condition.—It was decided in *Clayton* v. *Newcastle-under-Lyme Corporation* (1888) (*x*) that deduction could not be made of sums set aside annually to be expended in future years on restoring plant and apparatus of a gas works purchased in a defective structural condition.

Improvement of Railway Line.—A claim was made in *Highland Railway Co.* v. *Balderston* (1889) (*y*) to deduct sums expended in improvement of a section of the railway line to bring it up to the standard of the main line, and for extra weight of heavy rails and chairs in place of the lighter ones. The Court decided against the allowance.

The sums in question were charged against capital in the Company's books and the Lord President stated that by charging the sums against capital the Company was able to show a larger profit and thus pay their shareholders a larger dividend than if the sums had been charged against income.

> "One result of that would have been, if their present argument was sustained, that the aggregate amount of Income Tax which they deducted from their shareholders in paying their dividends would be much larger than the sum that the Company would now pay to the Inland Revenue, and so a considerable balance of the Income Tax upon the actual revenue of the Company would remain in the pocket of the Company itself."

His Lordship also pointed out that it appeared that the Company had acquired the portion of the line at a low figure owing to its imperfect condition, and that if it had been brought up to the standard before purchase, a higher price would have had to have been paid. The expenses in question have formed a permanent improvement of the property.

Lord Mure agreed with the inadmissibility of the expenses, and said that it was a remarkable fact that the charges were entered against capital in the Company's books. "I agree . . . that that is not conclusive of the question, but it cannot be thrown altogether out of view."

Syndicate.—In the *Californian Copper Syndicate* (*Ltd.*

(*x*) 2 Tax Cas. 416. (*y*) 26 Sc. L. R. 657; 2 Tax Cas. 485.

and Reduced) v. *Harris* (1904) (*z*) the Company was formed with the object of *inter alia* acquiring and reselling mining property, and after acquiring and working certain properties the Company resold to a second Company receiving payment in fully-paid shares of the latter Company. It was held that Income Tax was chargeable on the difference between the purchase price and the value of the shares.

The Company contended that it had no income, as the sales were really transactions by which the Company substituted for its capital in the form of land, a capital in the form of shares, and that any benefit resulting from such a transaction was a growth of capital and not of income. The Surveyor of Taxes argued that the Company was formed for the purpose, *inter alia*, of acquiring and reselling properties, and that any profits made on such resales were assessable.

LORD JUSTICE CLERK ruled that—

> "It is quite a settled principle in dealing with questions of assessment of Income Tax, that where the owner of an ordinary investment chooses to realize it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit in the sense of Schedule D of the Income Tax Act of 1842 assessable to Income Tax. But it is equally well established that enhanced values obtained from realization or conversion of securities may be so assessable, where what is done is not merely a realization or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business. The simplest case is that of a person or association of persons buying and selling lands or securities speculatively, in order to make gain, dealing in such investments as a business, and thereby seeking to make profits. There are many companies which in their very inception are formed for such a purpose, and in these cases it is not doubtful that, where they make a gain by a realization, the gain they make is liable to be assessed for Income Tax . . . the question to be determined being—is the sum of gain that has been made a mere enhancement of value by realizing a security, or is it a gain made in an operation of business in carrying out a scheme for profit-making?"

In referring to a contention of the Company that the price

(*z*) 6 F. 864; 41 Sc. L. R. 691; 5 Tax Cas. 159.

being in the form of shares, no assessment could be made until such shares were realized, his Lordship said, "But it was said that the profit—if it was profit—was not realized profit, and, therefore, not taxable. I think the profit was realized. A profit is realized when the seller gets the price he has bargained for. No doubt here the price took the form of fully paid up shares in another company, but, if there can be no realized profit, except when that is paid in cash, the shares were realizable and could have been turned into cash."

Commutation of Salary.—In *Royal Insurance Co. v. Watson* (*a*), the Company acquired another Insurance Company and undertook to retain the services of the manager of the latter at a salary of £4000 a year with liberty to commute such salary by payment of a lump sum if the appellant Company desired. Commutation was ultimately adopted, and it was claimed to deduct the amount of such commutation, but it was held that the payment formed part of the consideration for the transfer of the business, and was therefore capital expenditure.

The Lord Chancellor said that—

> "it is capital expenditure, it is the purchase money for the concern, that is to say, it is partly so. It is perfectly immaterial whether it was entirely so, or partly so, because if it was partly so, it is enough to establish the proposition which I am maintaining."

Lord Shand dealt with some interesting comparative matters, and expressed the opinion that if a voluntary agreement were made between a manager and a Company for payment of a salary for a specified number of years, but with power to the Company to terminate the service, whenever they thought fit, by payment of a capital sum, there would be considerable force in a contention that the payment should form a deductible allowance, and this would also be applicable where there had been wrongful dismissal of a person having an engagement for a term of years and who obtained damages.

(*a*) [1897] A. C. 2; 61 J. P. 404; 66 L. J. Q. B. 1; 75 L. T. 334.

Redemption of Lease. A redemption of a lease by a trader is similar to commutation of salary and is, therefore, allowable. If the trader continued paying the rent reserved under the lease it would be deductible just as would salary, so that if, to avoid continuance of a salary or a rent for matters which are commercially valueless to the trader, a lump sum is paid in discharge of future liability, that lump sum is merely an aggregate of allowable expenses.

Interest Paid to Foreign Bankers.—*Scottish North American Trust, Ltd.* v. *Farmer* (1911) (*b*). A claim was made for deduction of interest paid under the following circumstances, and the Crown contended that the borrowings on which the interest was paid were sums employed as capital within Rule 3 to 1st Case of Schedule D (p. 81). The main business of the Trust is to buy and sell investments, and as the value of its purchases of investments abroad exceeded its available cash, certain securities were lodged with bankers in New York to obtain a fluctuating overdraft, on which interest was charged at current rates from day to day. In addition to the overdraft, the bank subsequently granted a loan with a fixed maximum for six months at 6 per cent., which was renewed for a further six months and then terminated. The bank collected the interest of the securities, and after charging the interest due to themselves, credited or debited the Trust with the balance.

It was held that the interest paid was a deductible expense, and that the borrowings were not sums employed as capital.

The Trust was formed on 27th July, 1905, and the assessment in question for 1908–9 was arrived at as follows :-

(*b*) 132 L. T. Jo. 177.

	Year to 31st Oct., 1907. £	s.	d.	15 months to 31st Oct., 1906. £	s.	d.
Balance of profit as per P. & L. Account	4911	7	11	6119	2	5
Less balance brought forward from previous account	1119	2	5			
	3792	5	6			
Add sums debited as expenses and not allowable as deductions :—						
Suspense Account				414	15	4
Income Tax	108	18	11	378	2	2
Interest paid to bankers in America on loans by them to the Company	4576	13	4	80	5	4
	8477	17	9	6992	5	3
Deduct taxed dividends received by Company	2179	0	5	7882	8	5
Profit for year to 31st October, 1907	6298	17	4			
Loss for 15 months to 31st October, 1906	890	3	2			
Total profit for 2¼ years	5408	14	2			
Average yearly rate of profit	£2404	0	0			

LORD JOHNSTON ruled that—

> "It is immaterial that the loans were obtained and used in a foreign country. It is equally immaterial in what form these loans were obtained. They were short, in the sense that they were for short and indefinite periods, borrowed as occasion required, and repaid as opportunity permitted. They were, in fact, banking facilities or advances such as are represented by the ups and downs of a banking overdraft account."

His Lordship also dealt with the question—When does borrowed money become, for the purposes of the Income Tax Acts, capital of the concern in respect of which there is no deduction in name of interest, and when is it not capital in such sense so that interest paid for its use is a disbursement or expense "wholly and exclusively laid out or expended for the purposes of such trade"?

> "The dividing line is not easy to draw or to define. But I think that as the term 'profits' has, in applying the statutory provisions, been 'understood in its natural and proper sense, in a sense which no commercial man would misunderstand,' per

LORD HALSBURY, L.C., in *Gresham Life Assurance Society* v. *Styles* (*c*), so may the term 'capital' be understood."

In the House of Lords LORD ATKINSON stated that—

"authorities show that money borrowed by such a Company as the Appellant Company in this case in the fluctuating temporary manner in which it has been borrowed by them—the daily borrowing and lending of money being part of their trade and business—is not to be treated under the Joint Stock Companies Act as 'capital.' There is nothing to show that that word should bear a different meaning in the Income Tax Acts when applied to the proceedings of Joint Stock Companies. The interest is, in truth, money paid for the use or hire of an instrument of their trade as much as is the rent paid for their office or the hire paid for a typewriting machine. It is an outgoing by means of which the Company procures the use of the thing by which it makes a profit, and like any similar outgoing should be deducted from the receipts, to ascertain the taxable profits and gains which the Company earns."

His Lordship also disapproved of the authority of *Anglo-Continental Guano Works* v. *Bell* (1894) (*d*), and stated, in reference to dicta therein (that in ascertaining the profits—you cannot take into consideration the fact that the firm or trader has to borrow some portion of the money which is employed in the business).

"It does not appear to me that the reasoning on which this decision is based can apply to a bank whose business is the borrowing and lending of money; or to an investment Company whose business is conducted as is that of the Respondents in the present case. If it does apply then I can only say I think it unsound as so applied, and am unable to concur in it."

(See also "INTEREST," p. 262.)

Sales of Lands.—An important question arose in *Hudson's Bay Company, Ltd.* v. *Stevens* (1909) (*e*), when it was decided that the proceeds of sales of land under the following circumstances were not assessable to Income Tax. The Company were established by Charter, and in 1869 they

(*c*) [1892] A. C. 309; 56 J. P. 709; 62 L. J. Q. B. 41; 67 L. T. 479; 41 W. R. 270.
(*d*) 58 J. P. 383; 70 L. T. 670; 10 R. 161.
(*e*) 101 L. T. 96; 25 T. L. R. 709, C. A.

surrendered to the Crown their territory and rights of government in exchange, *inter alia*, for a money payment and a right to claim, within fifty years, a twentieth share in certain lands in the territory as the lands were from time to time settled. The lands were sold by the Company from time to time and the proceeds devoted partly to payments of dividends and partly to reduction of capital. The Company kept separate accounts for the Land Department and the Trading Department, and admitted liability to Income Tax on the profits of the latter, but contended that the proceeds of the sales of land were not taxable, as they represented part of the capital value of land acquired by the Company.

The Master of the Rolls stated that—

> "I need not stay to observe that if the money is otherwise liable to Income Tax it cannot escape taxation by reason of its being applied to a capital purpose."
>
> "The real question is whether this money can be regarded as profits or gains derived by the Company from carrying on a trade or business. In my opinion it cannot. The Company are doing no more than an ordinary landowner does who is minded to sell from time to time, as purchasers offer, portions suitable for building of an estate which has devolved upon him from his ancestors. I am unable to attach any weight to the circumstance that large sales are made every year. This is not a case where land is from time to time purchased with a view to resale; the Company are only getting rid by sale as fast as they reasonably can, of land which they acquired as part of a consideration for the surrender of their Charter."

Farwell, L.J., ruled that a man who sells his land, or pictures, or jewels, is not chargeable with Income Tax thereon, but if instead of dealing with his property as owner he embarks on a trade in which he uses that property for the purposes of his trade, then he becomes liable to pay on the annual profits.

His Lordship could not see a distinction between the position and that of an English landowner with a game farm on part of his estate, and who sold parts of his estate for building purposes, as his trade as a game farmer does not bring his sales as a landowner within the Income Tax Acts.

A landowner may lay out part of his estate with roads and sewers and sell it in lots for building, but he does this as owner, not as a land speculator.

> "It would be different if a landowner, an individual, entered into the business of buying and developing and selling land; but the case of the owner, whether of land, or pictures, or jewels, selling his own property, although he may have expended money on them in getting them up for sale, is entirely different; he sells as owner, not as trader."

KENNEDY, L.J., characterized as immaterial the fact that the proceeds of the sales had been partly used for payment of dividends.

The question of sale of properties was also raised in *Tebrau (Johore) Rubber Syndicate, Ltd. (in Liquidation)* v. *Farmer* (1910) (*f*). The Company was formed to acquire estates in the Malay Peninsula for cultivation of rubber trees, but power was given in the Memorandum of Association to sell the property, and the sale was contemplated in the prospectus of the Company. As the original capital was insufficient to develop the estate, the whole undertaking was sold to a second Company, and the consideration, which was mainly in the form of shares in a second Company, was in excess of the capital expended.

It was held that the profit on the sale was an appreciation of capital and therefore not assessable.

Sale of Purchased Assets.—In *Assets Co., Ltd.* v. *Forbes* (1897) (*g*), the Company was formed of solvent contributories of a bank, and acquired from the liquidator the outstanding assets, including sums expected to be recovered from estates of contributories. The Company sold portions of the assets at prices in excess of the values at which they were shown in the books of the liquidators. The question of assessability was not decided by the Court, as it was held that the case, as stated, did not contain sufficient materials upon which to base a decision.

(*f*) S. C. 906; 47 Sc. L. R. 816. (*g*) 34 Sc. L. R. 486.

Lord Young, however, stated that he had no doubt that any person, or any Company, making a trade of purchasing and selling investments would be liable to tax upon any profit made.

> "It is quite an intelligible business, just as intelligible as a trade consisting in the purchase and sale of goods in the ordinary trade of a merchant or shopkeeper . . . if proper traders sell their old premises and buy new ones, and sell the old premises at a higher price than they paid for them, investing in the purchase of the site and the erection of new premises the price which they got, I should say it was a totally untenable proposition that anything in excess of what they had paid for the old premises, perhaps, twenty years before, and which they got at a better time, that any excess upon the price which they paid at the better time is income within the meaning of the Act. I do not think it is at all."

Realization of Investments.—It is clear from the dicta in the above cases that any profit arising from the realization of investments is not assessable to Income Tax but is merely an appreciation of capital. A person speculating, as regards his private income, in stocks and shares, is not liable to tax on his profits thereby obtained. The Income Tax Acts have been rigidly construed as regards the inadmissibility of expenses which may be classed as capital expenditure, but this necessarily carries with it the fact that appreciations of *capital* do not form a subject matter of assessment.

(See "Pit Sinking" under "Mines," p. 273.)

(See *Vallambrosa Rubber Co.* v. *Farmer* (1910)(*g*), where it was decided that expenses of weeding, etc., unproductive parts of an estate, were revenue expenses and allowable.)

Parliamentary Expenses. (See *A. G. Moore & Co.* v. *Hare* (1914), at p. 286.)

Cattle Dealers.

The assessment of cattle dealers and sellers of milk is governed by Rule 3 to 3rd Case, Schedule D, which enacts that if the lands assessed under Schedule B "are not sufficient for the keep and sustenance of the cattle brought on the said

(*g*) S. C. 519; 47 Sc. L. R. 488; 5 Tax Cas. 529.

lands," the Commissioners may require a return of the profits and charge such further sum as will, with the Schedule B assessment, amount to the profits arising in the preceding year.

CEMETERIES.

A cemetery company is assessable under No. III. of Schedule A on the profits of the preceding year, and a deduction is not allowable for the estimated cost price of the grave spaces. (See *Edinburgh Cemetery Co.* v. *Kinmont*, [1889] (*h*) (p. 133).)

Upkeep of Lairs.—In *Paisley Cemetery Co.* v. *Reith*, [1898] (*i*) the Company received sums in commutation of the annual charge for the keep of lairs in perpetuity, and it was unsuccessfully claimed that such sums did not represent income.

The LORD PRESIDENT stated in reference to the question—Is Income Tax chargeable where money is received and a perpetual obligation undertaken?—that decided cases are against such a contention, and that the case is indistinguishable from the ordinary one of money paid down with an obligation to provide for certain expenses in the future.

In the *Portobello Town Council* v. *Salley* (1890) (*k*) the Council were required by law to provide a burial ground, and had to repay by instalments capital borrowed to acquire and construct the cemetery, and also had to pay interest on the debt. The receipts exceeded the expenses, and it was decided that the balance was assessable without taking cognizance of the borrowed capital or interest.

(See also "BURIAL BOARD," p. 129.)

CHALK QUARRIES.

Chalk quarries are assessable under No. III. of Schedule A on the profits of the preceding year.

(*h*) 27 Sc. L. R. 71; 17 R. (Ct. of Sess.) 154.
(*i*) 93 J. P. 806; 25 R. 1080, 35; Sc. L. R. 947.
(*k*) 55 J. P. 9.

CHARITABLE SUBSCRIPTIONS.

Charitable subscriptions which are of the nature of gratuities are not deductible, but when the subscriptions are made to local charities and institutions such, *e.g.* as hospitals, where the employees may receive direct benefit therefrom, they form an admissible deduction.

(See also "TRADE ASSOCIATION SUBSCRIPTIONS," p. 290.)

CLERGY.

In assessments on clergy, deductions are allowed as follows by sec. 52 of the Income Tax Act, 1853 :—

> "In assessing the duty chargeable under any Schedule of this Act upon any clergyman or minister of any religious denomination in respect of any profits, fees, or emoluments of his profession or vocation, it shall be lawful to deduct from such profits, fees, or emoluments any sum or sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty or function as such clergyman or minister; and if such sum or sums or expenses shall not have been deducted as aforesaid, then a proportionate part of the duty charged and paid by such clergyman or minister shall, on due proof to the Commissioners of such sum or sums having been expended as aforesaid, be repaid to such clergyman or minister."

(See pp. 348–351.)

It was decided in *Lothian* v. *Macrae* (1884) (*l*) that voluntary contributions by an aged minister towards the stipend of an assistant were not an allowable deduction within the above section.

LORD SHAND ruled that—

> "It appears to me that the true reading of these words is,—necessarily in the personal performance of his duty as clergyman—and that they will not cover the case of an arrangement made by which the personal performance . . . is, to some extent, to be devolved upon others . . . the expense of providing an assistant, in order to save to some extent the incumbent of the parish from personally performing his duties, is not expense, which can be said to be necessarily in the performance of that

(*l*) 22 Sc. L. R. 219.

duty, for I think the statute refers to personal performance of that duty."

The following expenses were decided upon in *Jardine* v. *Gillespie*, [1907] (*m*).

Allowed.—Cost of keeping horse and carriage.

An allowance granted by the Court of Teinds for communion elements.

Disallowed.—Expenses incurred in a process of augmentation.

Outlays for pulpit supply during holidays.

LORD KINNEAR stated that the duty referred to in the statute is a *personal* performance of the duty required of him by his Church, and does not admit, as an equivalent, delegation of duties to another person.

It was held in this case that the above allowed items were questions of fact, and LORD PEARSON said that "It must be borne in mind that we have only to do with the Commissioners' determination in so far as it is said to be erroneous in point of law."

Rent.—A deduction is allowable for the part of a dwelling house used "mainly and substantially" for the purpose of the duty of a clergyman or minister of any denomination up to one-eighth of the rent (see "Annual Value," p. 98). It is not necessary that the particular parts of the house should be *solely* used for the purposes of the clergyman's duty.

The assessments on Clergymen are mainly under Schedule E, under which Schedule Easter Offerings and other emoluments are charged.

(See Schedule E, p. 347, and Schedule A, p. 37.)

CLUBS.

The assessment of clubs raises the question of the assessability of mutual concerns. The latter are not generally assessable, as no profits in the sense of the Income Tax Acts are made. Subscriptions are paid by members in return for

(*m*) S. C. 77; 44 Sc. L. R. 136; 14 Sc. L. T. R. 556; 5 Tax Cas. 263.

the privileges attached to the club, but any excess of income over expenditure in a purely mutual club is not assessable to Income Tax. That the excess is not profit may be seen from the fact that if its assessability were maintained, the club could easily avoid taxation by so adjusting the subscriptions as to meet, as nearly as possible, the expenses. Moreover, the subscriptions could be fixed on a low basis with a provision of membership that, at the end of the year, any deficiency should be made good by equal contributions of all the members.

(See *New York Life Insurance Co.* v. *Styles* (1889) (*n*) under "Insurance," p. 252, which decided that in a mutual Insurance Company, the persons who agree to contribute to a common fund for mutual insurance could not be regarded as carrying on a trade. See also p. 155.)

In *Dublin Corporation* v. *McAdam* (1887) (*o*) Palles, C.B., said that—

> "in order to bring this case within the operation of the Income Tax Act, it is necessary that there shall be this trading in its strict true sense. There must be, at least, two parties—one supplying water, and the other to whom it should be supplied, and who should pay for it. If these two parties are identical, in my opinion there can be no trading. No man, in my opinion, can trade with himself; he cannot, in my opinion, make, in what is its true sense or meaning, taxable profit by dealing with himself; and in every case of this description it appears to be a question on the construction of the Act whether the two bodies—the body that supplies and the body or class that has to pay—were either identical, or, upon the true construction of the Act, must be admitted to have been held by the Legislature to be identical, and so legislated for upon that basis."

Bank Interest.—Where a club receives interest from a bank deposit, such interest is taxable—even though the club is strictly mutual—as interest is a separate subject matter of assessment (see p. 262).

Golf Clubs.—In *Carlisle and Silloth Golf Club* v. *Smith*,

(*n*) 14 App. Cas. 381; 59 L. J. Q. B. 291; 61 L. T. 201.
(*o*) 20 L. R. Ir. 497.

[1913] (*p*) the club was an ordinary *bonâ fide* members' club and was unincorporated. There was a covenant imposed by the lessor in the lease, that the club would admit non-members to play on its course on payment of green fees to be fixed by the lessors, but not to be below a minimum fixed in the lease. The green fees paid by the non-members passed into the general accounts of the club. The accounts showed an excess of income over expenditure.

It was held that the club was assessable in respect of profits from non-members.

The club receipts consisted of:—

(*a*) The subscriptions of members.

(*b*) Locker rents from members.

(*c*) Profits on the sales of supplies of refreshments, alcohol, and mineral waters, appearing in the club's income account under the head of "Steward's Account."

(*d*) Green fees (being the receipts from visitors) appearing in the club's income account under the head of "Visitors' Tickets."

The expenses necessarily incurred in maintaining the club exceeded the amounts received from green fees from visitors and the club contended that, being an ordinary *bonâ fide* members' club, and not an association carrying on the business of letting out golf links for profit, there was no liability to assessment, and that in any case there were no profits assessable, as the total annual expenditure incurred in maintaining the links in a proper condition exceeded the total fees received from visitors. The Surveyor of Taxes urged that the club was in receipt of profits or gains which, if not within Case 1 of Schedule D, came within Case 6 on all "annual profits or gains" not charged by any other Schedule, and that it was not sought to assess any surplus arising from members' subscriptions.

(*p*) 3 K. B. 75; 82 L. J. K. B. 837; 108 L. T. 785; 57 Sol. Jo. 532; 29 T. L. R. 508; 11 L. G. R. 710, C. A.

The assessment was calculated "by taking from the total visitors' fees for the year, such proportion of the total of all expenses applicable both to members and visitors, as the said fees bear to the total annual income of the club."

HAMILTON, J., decided that—

> "Now it seems to me that . . . constitutes engaging in the carrying on of an enterprise which is in itself outside the scope of the Club and is distinct from the ordinary objects and activities of the Club."

He stated that the connexion with non-members could be isolated.

His Lordship disapproved of the method of calculating the assessment (*ante*), and stated that the profits must be real profits, and they can only be arrived at after "ascertaining whether there is not, as one would certainly expect there would be, something to come off the gross before arriving at the net sum." The case was sent back to the Commissioners for the figures to be gone into with a view to ascertaining "the real apportionment of the total expenses of the club on common items which fall to the visitor and do not fall to the members."

The case was taken to the Court of Appeal, and the MASTER OF THE ROLLS said that—

> "I cannot draw any distinction between gate-moneys, which might be, and I believe sometimes are, received by a golf club, and green moneys. In each case the Club would be assessable." . . "If a landowner laid down upon his land a golf course and charged fees for admission and user—if, that is to say, the links were a proprietary golf links carried on with a view to profit—there can be no question but that the proprietor would be assessable. The adventure of maintaining golf links and charging for the use of them is an 'adventure or concern in the nature of a trade.'"

The contention of the club that the expenses each year exceed the receipts from visitors' green fees was characterized as irrelevant upon the question whether the club was assessable:

> "For the determination of this case, it is only necessary to say that the Club as an association (like the proprietary owner of a golf links) is receiving payments from third parties, and that the balance of profits or gains after debiting against those receipts such sum as may be proper by way of expenditure is a profit going into the pocket of the Club in respect of which it is assessable. The fact that in the pocket of the Club it saves the pocket of the member by reducing in his favour the current expenditure which otherwise he would have to bear is not a material circumstance for the purpose of ascertaining whether the Club as a society has made a profit or not."

KENNEDY, L.J., held that the Club was liable to assessment "in respect of their receipts from visitors," and he ruled that "Whether, when the account is properly taken, there is any profit balance, and what the proper method of assessment is, this Court has not to decide on the appeal before us."

Basis of Assessment.—The method of arriving at the assessable profit in respect of non-members is, in practice, as follows:—

Assume the gross takings to be £4000 and the part thereof derived from non-members' green fees as £1500. The gross profits are £500 and there is a Schedule B assessment (p. 39) of £200.

The net profit would therefore be:—

	£
Gross profit	500
Less Schedule B assessment	200
	300

The net profit of £300 would be divisible between the members and non-members as follows: there of course being no question of assessability in respect of the part applicable to members:—

	£	£	*s.*	*d.*
Members	$\frac{25}{40}$ of 300 =	187	10	0
Non-members	$\frac{15}{40}$ „ =	112	10	0
		300	0	0

The assessment on the Club would therefore be £112 10*s*.

An alternative method which is supportable in law is to divide the *gross* profit as follows :—

	£	£ s. d.
Members	$\frac{25}{40}$ of 500	= 312 10 0
Non-members	$\frac{15}{40}$ „	= 187 10 0
		500 0 0

	£ s. d.
Non-members' part	187 10 0
Less Schedule B assessment . . .	200 0 0

This would give no assessable profit.

The legality of this method is governed by the admitted fact that the profits of a Club, apart from the question of non-members' fees, are not assessable (*ante*), and that Schedule B is assessment on *profits* derived from the occupation of lands which profits are of course those derived from the income of the Club. As the latter has therefore paid tax on *profits* of £200 whereas the assessable profit is only £187 10*s*., a further assessment under Schedule D should not be made when the Schedule B assessment exceeds the profit apportioned to non-members. A further question arises in the extension of the exemption for "mutual" operations to Schedule B, and as the latter is clearly assessment on *profits* (see p. 39), sec. 188 of the 1842 Act (p. 57), may be invoked to extend the applicability. The Schedule B assessment in no way differs from Schedule D assessment except that in the former the profit is an arbitrary estimate while in the latter the actual profit is taken.

Clubs with Limited Liability. Clubs, in some cases, adopt limited liability, with shares of a nominal value of *e.g.* 1*s*. each, and it is a condition of membership that one share (and no more) is held. These conditions do not take a Club out of the category of mutual concerns.

Holiday Clubs.—Holiday clubs are formed annually for the purpose of furnishing facilities for making holiday savings, and the question of liability to bank interest on the deposited

savings arises, but, in practice, the assessment is restricted to the proportion of interest applicable to members who are liable to Income Tax by reason of their income being in excess of the exemption limit of £130. (See p. 332.)

(See also "CLUBS," under Schedule A, p. 398.)

COAL DUES.

Coal dues received by the Brighton Corporation were held to be assessable. The Corporation were empowered to levy a "rate or duty" on coal landed on the beach, or otherwise brought into Brighton, and the rate was to go to a common fund to be expended in connexion with paving, lighting, and other municipal work, *A.-G.* v. *Black* (1871) (*q*).

COMMISSION.

In ascertaining commission based on profits the latter are to be taken as inclusive of Income Tax as was laid down in *Johnston* v. *Chestergate Hat Manufacturing Co., Ltd.* (1915) (*r*). In the latter case a manager was entitled, under agreement, to a certain salary plus, at the end of the year, after the profits had been certified by the auditors, a sum equal to one-third of the first £600 of the net profits for the whole of the year, and also a sum equal to one-quarter of the second £600 of such net profits, and a further sum equal to one-sixth of all such net profits over and above the sum of £1200. The agreement defined "net profits" as meaning "the net sums available for dividends as certified by the auditors of the company after payment of all salaries . . . rent, interest at the rate of 5 per cent. per annum upon capital, and after making such allowances for depreciation as the auditors of the company may advise." New auditors certified under the above clause that the net profits available for dividends were an amount *less* Income Tax, and the latter was debited in the Profit and Loss

(*q*) L. R. 6 Ex. 308; 40 L. J. Ex. 194; 25 L. T. 207; 19 W. R. 1114; 1 Tax Cas. 52.
(*r*) 2 Ch. 338.

account. In deciding in favour of the manager Mr. Justice Sargant held that Income Tax is *part of the profits* and, . . . , not a deduction in arriving at profits, and that when the auditors' certificate had been given on a wrong principle it was not conclusive. See also pp. 236–241.

Commutation of Salary.

(See "Capital," p. 139.)

Compensation Levy.

(See "Brewery," p. 113.)

Compensation to Workmen.

Compensation paid to workmen in connexion with accidents is a deductible expense.

Conciliation Board Expenses.

Contributions paid by a colliery company in the form of a levy made by a Coalowners' Association, and devoted to defraying expenses of the Scottish Conciliation Board, are a deductible allowance: *Lochgelly Iron and Coal Co., Ltd.* v. *Crawford*, [1913] (*r*). The Conciliation Board is a means of settling disputes between the employer and the workmen, and the Lord President held that "it was a machinery which the coalowners were entitled to keep up just as one might, as proper expenses, have a legal secretary."

(See "Mines," p. 270.)

Co-operative Stores.

Co-operative societies have no legal exemption from Income Tax, but, as the majority of the shareholders are not liable to Income Tax by reason of their respective total incomes not exceeding the exemption limit of £130 (see p. 332), the ordinary practice of assessing the concern on the profits and leaving the concern to deduct and retain tax from the

(*r*) S. C. 810; 50 Sc. L. R. 597.

dividends paid, is not followed. No assessment under Schedule D is made, but any liable *shareholders* are assessed direct on the dividends received from share capital. This procedure avoids considerable trouble which would otherwise result to the shareholders in claiming repayment of the tax deducted on payment of dividends, and to the Revenue in investigating such claims.

In the case of those Co-operative Stores which do not possess the preponderating exemption element, the Schedule D assessments are made in the ordinary manner and tax is deducted from the dividends. (See p. 188.)

The "dividends" paid to *members* on purchases made, are not taken as assessable profit. A Departmental Committee on Income Tax considered this question in 1905, and referred to the nature of these "dividends" which do not form taxable profit, but merely arise from the fact that the prices charged to members are in excess of cost price, and that if the goods were distributed at cost price there would be no "dividend" and therefore no basis on which Income Tax could be assessed. The Committee described the "dividend" as merely a return to members "of sums which they have paid for their own goods in excess of the cost price," and as the system conduces to thrift the Committee saw "no reason for discouraging it." (See also p. 252.)

Co-operative Societies have no exemption from Schedule A.

Co-partnership Schemes.

Companies having co-partnership schemes may claim to be allowed to pay dividends in full to exempt workmen in respect of co-partnership stock, provided that the dividend warrant contains the following clause:—

"I hereby certify that, in accordance with arrangements made with the Board of Inland Revenue, the amount of dividend mentioned below (or this dividend) is paid without deduction of Income Tax, and that no claim to repayment of Income Tax thereon will therefore be allowed."

The dividends applicable to the exempt workmen would be deducted in arriving at the Schedule D assessments of the Company.

Damages.

Damages awarded to a guest staying at an inn under the management of a brewery company, through injuries sustained from a falling chimney, were disallowed in *Strong & Co., Ltd.* v. *Woodifield*, [1906] (*s*) dealt with at p. 86.

(See also "Legal Costs," p. 266, and *Royal Insurance Co.* v. *Watson* (1897) (*t*), p. 139.)

Dead-Rent.

A deduction is not allowable in respect of recoupments of dead-rent. A minimum dead-rent has to be paid when the royalties do not reach such rent, but any surplus of dead-rent over royalties in a particular year may be recouped in future years when the royalties exceed the dead-rent. The mine is, however, assessable on its profits before deduction of surplus royalties recouped, although in the previous years the dead-rent had been assessed before the mine had begun to work. *Broughton and Plas Power Coal Co., Ltd.* v. *Kirkpatrick* (1884) (*u*).

Assume the Minimum Royalty to be £1000 per annum, and that in a particular year the Royalty *actually* due, as based on *e.g.* tonnage of coal, was only £600. The full Royalty of £1000 would have to be paid, but, for commercial purposes, the excess of £400 would be carried forward, thus if in the subsequent year the Royalty *actually* due amounted to £2000, the payment to the Royalty owner would be £1600. For Income Tax purposes, however, the £1000 would be disallowed as a deduction for the 1st year, and the full £2000 would be similarly disallowed for the second year.

(*s*) A. C. 448; 75 L. J. K. B. 864; 95 L. T. 241; 22 L. T. R. 754.
(*t*) A. C. 1; 61 J. P. 404; 66 L. J. Q. B. 1; 75 L. T. 334.
(*u*) 14 Q. B. D. 491; 49 J. P. 119; 54 L. J. Q. B. 268; 33 W. R. 278.

(See p. 289.)

The reason of non-deduction generally is that the payer is entitled to deduct tax from the payments, but he cannot deduct tax in excess of the actual payment of tax.

(See also "MINES," p. 270.)

DEBENTURE EXPENSES.

The expenses attending the issue of debentures such, *e.g.*, as commission paid to brokers, stamps on debentures, printing, advertising, etc., do not form an admissible deduction. In *Texas Land and Mortgage Co.* v. *Holtham* (1894) (*x*) the mortgage company issued debentures in order to raise money, which they lent at a higher rate of interest.

MATTHEW, J., in refusing the deduction, stated that the amount paid in order to raise money on debentures, comes off the amount advanced upon the debentures, and is therefore so much paid for getting the money, but that there cannot be one law for a Company having sufficient money to carry on all its operations, and another for a Company which is content to pay for the accommodation.

In practice, a Mortgage and Investment Company is allowed to deduct the cost of renewal of existing debentures, but the cost of raising fresh capital by debentures is disallowed.

DEBENTURE INTEREST.

The interest paid by an English Company, with works abroad, to foreign debenture holders in respect of debentures secured on foreign property, is not an allowable deduction: *Alexandria Water Co.* v. *Musgrave* (1883) (*y*).

The question was raised as to the power of the Company to deduct tax from the foreign debenture holder when paying the interest, and the MASTER OF THE ROLLS was unwilling to give an opinion thereon. It would appear that the Company would

(*x*) 10 T. L. R. 337.

(*y*) 11 Q. B. D. 174; 52 L. J. Q. B. 349; 49 L. T. 287; 33 W. R. 146, C. A.

not possess the right to deduct tax as, although the Income Tax law may authorize deduction, it cannot compel a foreigner to accept the reduced interest when the security is on foreign property, and therefore out of the control of the British Courts. If no condition for deduction had been imposed on the issue of the debentures it would appear that the debenture holder would be able to realize the security, on the company refusing to pay the interest in full. (See *Gresham Life Assurance Society* v. *Styles*, [1892] (*z*), p. 248.)

(See "FREE OF TAX" under "DIVIDENDS," p. 188.)

DEFALCATION.

A deduction is allowed in practice for the loss arising from defalcations of employees.

DEPRECIATION.

An allowance is permitted for "wear and tear," but there is no specific legal provision fixing the percentage rates to be granted, although in certain cases (*post*) arrangements have been made by which, for the industries concerned, a fixed percentage pertains in practice, but these arrangements are not statutorily binding on any party.

The depreciation allowance applies only to machinery and plant; leaving, *e.g.*, buildings and leases outside the allowance.

The amount of the allowance is left solely to the discretion of the Commissioners by the words "as they may think just and reasonable" in sec. 12 of the Customs and Inland Revenue Act, 1878 (*post*), and therefore the *amount* cannot be questioned in the Courts on a case stated (see p. 329). As the Acts do not give specific percentages on the values of machinery and plant, it will thus be seen that the Commissioners are empowered to grant such allowance as is, from a commercial point of view, just and reasonable. This fact

(*z*) A. C. 309; 56 J. P. 709; 62 L. J. Q. B. 141; 67 L. T. 479; 41 W. R. 270; 3 Tax Cas. 185.

is of considerable importance as, generally, the allowance is restricted, in practice, on the urging of the Crown, to 5 per cent. on the written-down value of the fixed machinery and plant. The Commissioners are, however, able to meet the peculiar exigencies of any case, and when, *e.g.*, machinery is running night and day, an allowance may be made to cover the increased depreciation. There is no limit to the allowance except that it must be "just," and the Commissioners are the despotic judges as to what is "just," therefore there is ample power in the Commissioners to allow what is sufficient in a commercial sense.

Repairs are deductible by Rule 3 to Case I. of Schedule D, and an option is vested in the taxpayer of taking an estimated allowance for "wear and tear" or of debiting under Rule 3 (*ante*) the actual cost of Renewals. The exercise of the option is a matter to be decided on the facts of a particular case. As regards loose tools "wear and tear" is not allowed as renewals are debited.

Fixtures and Fittings.—Depreciation of fixtures and fittings is now allowed in practice when they are of a permanent and durable nature, paid for out of capital and not subject to frequent renewal. With, *e.g.*, hotels the general practice is to charge renewals instead of depreciation.

The **Law** involved is as follows:—

Sec. 12 of the Customs and Inland Revenue Act, 1878:

> Notwithstanding any provision to the contrary contained in any Act relating to Income Tax, the Commissioners for general or special purposes shall, in assessing the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade, chargeable under Schedule D, or the profits of any concern chargeable by reference to the rules of that Schedule, (*a*) allow such deduction **as they may think just and reasonable** as representing the diminished value by reason of wear and tear **during the year** of any **machinery or plant** used for the purposes of the concern, and belonging to the person or Company by whom the concern is carried on; and for the purpose of this provision, where machinery or plant is let to the person or Company by whom the concern is carried

(*a*) Refers to No. III. of Schedule A, p. 55.

on upon such terms that the person or Company is bound to maintain the machinery or plant, and deliver over the same in good condition at the end of the term of the lease, such machinery or plant shall be deemed to belong to such person or Company.

And where any machinery or plant is let upon such terms that the burden of maintaining or restoring the same falls upon the lessor, he shall be entitled on claim made to the Commissioners for general or special purposes, in the manner prescribed by sec. 61 of the Act of the fifth and sixth years of Her Majesty's reign, chapter thirty-five, to have repaid to him such a portion of the sum which may have been assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as shall represent the income tax upon such an amount as the said Commissioners may think just and reasonable, as representing the diminished value by reason of wear and tear of such machinery or plant during the year:

Provided, that no such claim shall be allowed unless it shall be made within twelve calendar months after the expiration of the year of assessment.

Sec. 26 of the Finance Act, 1907:

(1) For the purpose of enabling deductions for wear and tear to be allowed by the additional Commissioners, claims in respect of those deductions shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains of the concern for the purpose of which the machinery or plant is used, and the additional Commissioners in assessing those profits and gains shall make such allowances in respect of those claims as they think just and reasonable.

(2) No deduction for wear and tear or repayment on account of any such deduction shall be allowed in any year if the deduction when added to the deductions allowed on that account in any previous years to the person by whom the concern is carried on will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or reinstatement.

(3) Where as respects any trade, manufacture, adventure, or concern full effect cannot be given to the deduction for wear and tear in any year owing to there being no profits or gains chargeable with income tax in that year, or owing to the profits or gains so chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount

of the deduction for wear and tear for that year and deemed to be part of that deduction, or if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years.

(4) In this section the expression "deduction for wear and tear" means the deduction allowed, or which would be allowed, under sec. 12 of the Customs and Inland Revenue Act, 1878, as representing the diminished value, by reason of wear and tear during the year, of machinery or plant used for the purposes of any trade, manufacture, adventure, or concern.

The 1905 Departmental Committee on Income Tax reported as follows on the definition of "wear and tear" in sec. 12 (*ante*).

> The interpretation of this enactment has formed the subject of more than one reference to the courts, and even now it does not appear to be quite clear whether the judicial decisions obtained require the section to be read as meaning no more than this, that loss by depreciation may be allowed, even though no expenditure has been incurred in making it good by repairs, or as meaning that, after all damage by wear and tear has been made good by repairs, short of renewal, a further allowance may be made in respect of the imperceptible and irremediable deterioration due to age.
>
> The opinion of the Board of Inland Revenue and the practice follows the latter and more liberal interpretation, which seems to us the correct one.

Stud Farms.—In *Earl of Derby* v. *Aylmer* (1915) (*a*), two stallions were bred by the appellant and valued at £60,000. A claim was made under sec. 12 (*ante*) that the value should be written down for Income Tax purposes by a uniform annual rate of depreciation based on the normal useful life of stallions, which life was estimated as 18 years. The decision was against the appellant as it was held that the stallions were not within the 1878 Act by reason of their diminished breeding value, but that the reduced value was comparable with investment of money in a wasting asset (see p. 131). Mr. JUSTICE ROWLATT specifically pointed out that the ruling did not apply to horses used for trade purposes.

Succession.—The provisions of sec. 26 (3) as regards carrying forward unallowed depreciation indefinitely was

(*a*) 3 K. B. 374 ; 84 L. J. K. B. 2160 ; 139 L. T. 1005 ; 31 T. L. R. 528.

dealt with in *Scottish Shire Line, Ltd.*, v. *Letham* (1912) (*b*). A Limited Company was formed with the object of taking over the business of another Limited Company, and it was claimed that the unallowed depreciation should be carried forward to the new Company, but the Surveyor of Taxes contended that the allowance was personal to the old Company.

It was held that the claim should be allowed.

In this case the new Company were assessed, as *successors* to the old Company, under Rule 4 to 1st and 2nd Cases Schedule D (see p. 66) on the average of profits of the three preceding years while the business was in the hands of the old Company, but had a *specific cause* been proved under the said Rule (see p. 68) a different question may have arisen.

LORD DUNDAS pointed out that the Appellants' business was the same as that of the old Company and that the shareholders were practically (though not identically) the same.

> "It was urged for the Crown that the deduction for wear and tear is a personal allowance: and that the Appellants are not entitled to an allowance in respect of the deductions for wear and tear to which full effect could not be given in preceding years while the plant and machinery were the property of their predecessors. I cannot accept this view. The language of the sub-section is conceived in broad and general terms, and does not (I must assume intentionally) strike any personal note. The references in sub-sec. 2 to the 'person' seem important rather by way of contrast than as supporting the Crown's contention. Again, sub-sec. 4, while it takes one back to sec. 12 of the 1878 Act, does not repeat, but omits, the words of personal limitation with which that section concludes. The Crown has treated the Appellant Company as the old Company by taking that Company's profits during the preceding years as the basis for assessing the Appellants' profits for 1910. I think it would be anomalous if we were to permit the Crown to treat the Appellants as a new and different concern when it comes to the matter of the wear and tear deduction. For the reasons now shortly summarized, I think the determination of the Commissioners was wrong, and that the Appellants are entitled to succeed."

LORD SALVESEN admitted that there was a difference in

(*b*) S. C. 1108; 49 Sc. L. R. 792; 6 Tax Cas. 91.

legal *persona* between the two Companies, and he also said that where the legislature intended a distinction of the kind in question to be made "it would . . . appear that those who framed the Act knew how to express it in clear and distinct terms." His Lordship said that as the Appellants were admittedly assessable on the same footing as the old Company he could see no reason why they should not be entitled to the same allowances as the old Company would have been had they continued. The contention that the Appellants had acquired depreciated assets for which allowance had been made in fixing the purchase price was irrelevant as capital was not assessable. If the Crown's arguments were sound an immaterial change in a partnership would deprive the remaining partners of the deduction.

Basis of Allowance.—The allowance for depreciation is calculated on the probable life of the items comprising the machinery and plant so as to arrive at an estimated average which will comply with the requirements of the words "just and reasonable." The wear and tear *during the current year of assessment* is the basis of computation, and the percentage is taken from the capital value of the machinery and plant as written down year by year for Income Tax purposes, thus, as the amounts written off by the trader often differ from those written off by the Revenue, the capital value for Income Tax purposes generally differs from that appearing in the balance sheet. In *Cunard Steamship Co.* v. *Coulson* (1899) (*c*) the Company claimed depreciation in respect of the average of the three preceding years on which the assessable profit is calculated, but it was held that the *assessment* should be made irrespective of the allowance for depreciation, the deduction for which is only that estimated as for the year of assessment.

This case did not arbitrarily lay down that the basis is the value at the beginning of the year of assessment, but the Commissioners had allowed depreciation on that basis, and it

(*c*) 1 Q. B. 865; 68 L. J. Q. B. 554; 80 L. T. 326; 15 T. L. R. 285; 4 Tax Cas. 63.

was held that such basis was within the 1878 Act, and that the *average* was not in compliance with the Act. The words "diminished value . . . during the year" strictly refer to the depreciation in the year of assessment, but, as the Commissioners are vested with a discretionary power as to what constitutes a "just" amount, their allowance. in reality, is final, but the reintroduction of sec. 133 (p. 371) has evolved the question of a strict construction which would clearly allow the depreciation under the adjusted assessment to be that during the year of assessment as shown by the value of the machinery and plant during that year. This point is strengthened by the fact that the judgment in the *Cunard* case was influenced by the inability to allow depreciation "during the year" until the expiration of the year, whereas sec. 133 only operates after such expiration.

The following example illustrates the method of allowing depreciation :—

YEAR 1915–16.

	£	£
Written down value of machinery and plant at 31st March, 1914.	20,000	
Less depreciation allowed for 1914–15	1,000	19,000
Plus additions during year to 31st March, 1915		6,000
Value at 31st March, 1915		25,000
Depreciation for 1915–16 at 5 per cent. on £25,000		£1,250

As the allowance for depreciation is on the diminishing value, it will be seen that the value would never be entirely written off. Assuming that machinery valued at £100 and with a life of twenty years were depreciated by 5 per cent. on the diminishing value there would still be a value of about £36 remaining at the expiration of the period of twenty years. Similarly, depreciation by 7 per cent. would give a remaining value of £21 and 10 per cent. would give £12. The Income Tax law has no provision for dealing with these remaining values,

and if the scrap value were £5 there would be an obsolescent item of £31, £16, or £7, which would have disappeared without being allowed for in the Income Tax Assessments. To meet this difficulty an allowance may be made—in practice—for obsolescence as hereunder.

The basis being the *diminished value* during the year it is clear that the allowance must be made on the actual *value*, therefore if a claim has not been made for depreciation it is only legally possible to claim on the *present* value, not on the original value, but when, *e.g.*, machinery has been acquired at a cost below *market* value the depreciation should be calculated on the *actual* value.

Obsolescence.—The allowance for obsolete machinery was instituted in 1897 by the following communication from the Treasury, but no steps have been taken to bring this concession before the public, in fact even the District Commissioners have received no notification of the suggestion contained in the letter :—

Treasury Chambers,
Whitehall, S.W.,
May 28, 1897.

DEAR SIR,

The Chancellor of the Exchequer has had under his consideration the memorial of the Association of the Chambers of Commerce of the United Kingdom, which you sent him at the beginning of April.

The chief points raised in the memorial are as follows :—

1. That the allowances in respect of repairs and depreciation of machinery are insufficient, and the methods of calculating such depreciation are unsatisfactory.
2. That no allowance is made for the cost of replacing machinery which has become obsolete.

As to the first point, I am to say that, as the law now stands, deductions are allowed both in respect of expenditure incurred in repairs or alterations of machinery according to an average of the three years preceding the year of assessment, and also in respect of the diminished value of machinery by reason of wear and tear during the year. The allowance of these deductions is in the hands of the district or special Commissioners as the case may be, and they have to decide in each case as it arises the adequacy of the deductions allowed.

As to the second point, I am to say that the Board of Inland Revenue have given instructions to their Surveyor at Leicester which is particularly referred to in the memorial, that, where claim is made in respect of the introduction of more modern machinery in a factory, no objection is to be taken to the allowance, as a deduction from the assessable profits of the year, of so much of the cost of replacement as is represented by the existing value of the machinery replaced. Any excess in the cost of the new machinery over the actual present value of the old, is an addition to the capital of the business, and cannot properly be regarded as a charge upon revenue for the purposes of income tax assessment.

I am to add that similar instructions will be given to surveyors in other districts when this question arises there.

I am, Sir,
Your obedient Servant,
(Signed) W. A. MOUNT.

The Secretary,
Association of Chambers of Commerce.

The "existing value of the machinery replaced" means the value as written-down for Income Tax purposes less the sale value.

The item "Additions to Machinery and Plant" in the balance sheet would represent "Additions less sales."

The allowance is strictly one of practice, as it has no statutory authority, and in *London County Council* v. *Edwards* (*post*), which was decided in 1909, CHANNELL, J., expressed the opinion that "there is no ground whatever for saying that the Appellants would have any deduction for such depreciation as was occasioned by their plant becoming obsolete, and getting out of fashion."

It is advisable to retain particulars of individual machines to facilitate the calculation of the amount admissible for obsolescence on replacement taking place.

It is not necessary that the replacement should be by machines of the same manufacturing purpose, and there should not obviously be such a distinction, as the allowance, in effect, merely permits the deduction of the written-down value of scrapped obsolete machinery, less the scrap value, or, if it has a sale value outside the particular concern to which it belongs, less such sale value.

Revaluation.—When a revaluation of the machinery and plant, or the first professional valuation, shows that the values appearing in the balance sheet are too low, a claim should be made that the enhanced value should be substituted for the existing Income Tax value, assuming that the latter was originally based on the balance sheet value at the time. This may be opposed by the Crown on the grounds that the Income Tax value being a written-down one, and the depreciation having been allowed at a different rate from that adopted in the balance sheet, there is not a sufficient identity between the Income Tax value and the balance sheet value to permit of alteration. It is obvious, however, that the original Income Tax value coincided in all probability with the balance sheet value, and as both values were thus, initially, equally under-estimated, there is no legitimate reason why the revaluation should not be adopted. A different aspect of the question would of course arise if the increased value were merely the effect of past writing-down (for Income Tax purposes) by excessive depreciation. If the written-down Income Tax value exceeds that of the revaluation there is *prima facie* evidence of insufficiency of past Income Tax allowances.

Renewals—Railway Company.—In *Caledonian Railway Company* v. *Banks* (1880) (*d*) the Company were allowed sums expended for repairs and renewals of rolling stock, and a further allowance in respect of wear and tear of newly-added stock which had not required any repair or renewal, was claimed. LORD GIFFORD held that the railway cannot get deduction for deterioration twice over—first, by deducting the actual expense of repair and renewal, and then by deducting an additional estimated sum for the same thing. A distinction cannot be made between old and new plant, and his Lordship further pointed out that the assessment had been made in entire accordance with the Company's accounts. Only actual depreciation may be taken into account.

(*d*) 18 Sc. L. R. 85; 8 R. 89; 1 Tax Cas. 487.

LORD JUSTICE CLERK stated that—

> "I do not think that the words (*diminished value*) had any reference to the value of the plant as merchantable or marketable articles, because its capacity to earn income constitutes its sole value to the Railway Company, and is the only quality contemplated under the statutes relating to the taxation of income. I am the more confirmed in this impression by the terms of the second part of the first paragraph of the 12th section, relative to the valuation of plant in the hands of a tenant under an obligation to restore it to the owner in as good condition as it was when he received it. By the terms of the section such plant is to be held to belong to the tenant, and is to be settled with for income tax on precisely the same principles as it would have been if he had been the proprietor, but it is plain enough that if the plant is restored as it was by the tenant under such a contract within the first five years of its existence, assuming that no repairs or renewals are required during that period, his obligation is fulfilled, and he could have no possible interest in the marketable value of an article which he had no power to sell."

(See p. 160.)

His Lordship further held that the amount of the "diminished value by reason of wear and tear" is a question of *fact* for the Commissioners, not for the Court.

Tramways.—(See also Arrangements, p. 178.) The question of the despotic jurisdiction of the Commissioners was raised in *London County Council* v. *Edwards* (1909) (*e*). The Council had acquired some horse tramways and proceeded to reconstruct them for electric traffic. Only part of the track was completely worn out at the time of reconstruction, there being an average unexhausted life of the horse rails replaced of eight years. The agreed practice had been to allow deduction of the actual renewals, but the Council claimed that the deduction should not be restricted to renewal of the rails wholly exhausted, but should include allowance for the partial exhaustion of the remainder of the track which had been reconstructed, or alternatively, depreciation should be allowed.

e) 73 J. P. 213; 100 L. T. 444; 25 T. L. R. 319; 5 Tax Cas. 383.

It was held that no question of law was involved and that therefore the Commissioners' decision was final.

CHANNELL, J., held that the question was one of fact and stated that he did not quite agree that a new thing cannot be depreciated by wear and tear, and that as long as the thing in question is fit to do its work and does not require replacing there is no diminution in value by wear and tear. The value of a thing depends to a certain extent not only upon its present use, but upon the period which it is likely to last. A rail which is fit to use now, and to use for two years more, is not so valuable as a rail which is quite new, and will be fit to use for 20 years, and the difference is a diminution caused by wear and tear, and a diminution of value by wear and tear within the meaning of this section. Consequently it is a fallacy to say because this plant is all new, and because nobody would think of doing anything to it at the end of one year only, when it has had only one year's wear and tear, that it is not diminished in value at all.

Ships.—In *Burnley Steamship Company* v. *Aikin* (1894) (*f*) a claim was made, in addition to depreciation by wear and tear, for :—

(*a*) Loss of earning power owing to the ship having become more or loss obsolete ;

(*b*) Diminution in market value apart from that caused by wear and tear.

It was held that the claims for (*a*) and (*b*) could not be admitted.

The LORD PRESIDENT ruled that the words "diminution of value through wear and tear" in a year plainly point to the physical deterioration going on in the subject which is being considered, and to bring in under these words the fact that relatively the ship is now of less value because during the year other people have built better ships strains the language in a way which is entirely unwarranted.

LORD MCLAREN said that "wear and tear means nothing

(*f*) 31 Sc. L. R. 803 ; 21 R. 965 ; 3 Tax Cas. 275.

more than the physical depreciation of the subject apart from its being rendered less useful by the discovery of better machinery or better modes of doing the same thing."

In *Leith, Hull, and Hamburg Steam Packet Company* v. *Bain* (1897) (*g*), the Commissioners had allowed 5½ per cent. on written-down value of the whole fleet but the company claimed a larger allowance. The Lord President commented on the "abominably badly stated case" and refused the appeal.

Interest.—In *Leith, Hull, and Hamburg Steam Packet Company* v. *Musgrave* (1899) (*h*), the Commissioners, in fixing the wear and tear allowance, took into account that the sum allowed annually might be invested and produce interest at three per cent. per annum. The Court decided that the Commissioners were not entitled to take cognizance of the interest.

Lord Trayner stated that sec. 12 allowed such sum as would represent diminished value by wear and tear, so that when worn out the plant may be replaced as the shipowner would be possessed of a sum equivalent to the original cost of the vessel. He was of the opinion that a reasonable way of ascertaining the amount of the deduction would be to spread the original cost over the average life of a steamer.

Lord Moncreiff held that the statute does not contemplate any inquiry into the prospective use which may be made by the taxpayer of the deductions allowed.

In the *P. and O. Steam Navigation Co.* v. *Leslie* (1900), C. A. (*i*), the average duration of the service of the ships was about seventeen years, and the Company contended that duration of service, not duration of life, was the proper basis and that allowance on the original cost was the correct principle. The said period of seventeen years relates to service with the Company and is distinct from duration of life. The Company further contended that interest should not be taken into

(*g*) 3 Tax Cas. 560. (*h*) 1 F. 1117; 36 Sc. L. R. 745; 4 Tax Cas. 80.
(*i*) 82 L. T. 137; 4 Tax Cas. 177.

account. The Commissioners, however, arrived at twenty-eight years as being the duration of life of a passenger steamship, and allowed 6 per cent. depreciation on the diminishing value.

WRIGHT, J., held that a percentage on the original cost would not be consistent with sec. 12 of the 1878 Act, as it "might have no direct relation to the actual diminishing of value in a particular year."

It was held that no point of law was involved, and that therefore the Commissioners' decision could not be reviewed.

Plant.—In *John Hall Junior & Co.* v. *Rickman* (1906) (*k*), it was held that the Commissioners could not take into account past allowances in order to avoid granting depreciation after the full value had been allowed, but this point was subsequently dealt with by sec. 26 (2) of the Finance Act, 1907 (p. 161), which imposes a restriction as to the continuation of depreciation. It was decided, however, that an old sailing ship used as a floating warehouse for coal was "plant" within the meaning of sec. 12 of the Customs and Inland Revenue Act, 1878.

The Practice.—Allowances in respect of ships have, however, been *primâ facie* fixed as follows by the Revenue :—

Steamers 4 per cent. on prime cost.

Sailing ships 3 per cent. on prime cost.

Prime cost is the original cost price, plus subsequent capital expenditure, and the allowance is not to exceed the total prime cost less the breaking up value of 4 per cent. for steamers and 3 per cent. for sailing ships.

Depreciation of Securities.—No allowance is made for depreciation in market value of securities held by a trading Company, but appreciation is not credited for Income Tax purposes.

Mills, &c.—The following depreciation allowances are made in practice, on the written-down value (see p. 164), and if the rates are to be applied for the first time the existing

(*k*) 1 K. B. 311; 75 L. J. K. B. 178; 94 L. T. 224; 54 W. R. 380; 22 T. L. R. 131.

written-down value should be ascertained by writing down the original cost at the rates specified hereunder. Renewals and replacements less obsolescence allowances, should be charged to capital.

Flour Mills.—5 per cent. in respect of engines, boilers and main shafting (plant), and 7½ per cent. on the other more perishable machinery (utensils).

Paper Mills.—5 per cent. on machinery in mills working by day only; or 7½ per cent. where the mills are running by day and night.

Printing Works.—5 per cent. in respect of engines, boilers and shafting; and 7½ per cent. in respect of printing and binding machines.

Type is generally dealt with by allowance of renewals, but depreciation up to 10 per cent. may be obtained if desired (see, however, p. 160).

The above rates do not apply to special and delicate machinery which is considered with regard to the particular facts.

Balance Sheets.—(See p. 299 as to the demand of the Revenue for Balance Sheets with which to verify the "machinery and plant" account.)

Claim for Allowance.—It is necessary in view of sec. 26 (1) of the Finance Act, 1907, which requires "claims . . . to be included in the annual statement," that the form No. 11 referred to should be filled in, even though Accounts are regularly supplied. This point is of considerable importance in connexion with the carrying forward of depreciation under sec. 26 (3) of the Finance Act, 1907, as a Surveyor of Taxes has argued that omission to comply with sec. 26 (1) precluded the carrying forward of depreciation.

Loss.—On a loss occurring during the year of assessment and repayment being claimed under sec. 23 of the Customs and Inland Revenue Act, 1890 (see p. 364), the allowance for wear and tear increases the loss and therefore the amount of repayment.

Carrying Forward of Depreciation.—The following example shows the effect of sec. 26 (3) of the Finance Act, 1907 :—

Accounts are made up to 31st December, and the profits are as follows :—

		£		
Year to 31st December,	1911 =	3000		
,, ,, ,,	1912 =	1200	= £1440	= £3440
,, ,, ,,	1913 =	120		
,, ,, ,,	1914 =	9000		

The assessment for 1914–15 would be made on the average profits of the three years ended 31st December, 1913, and would = £1440. The 1915-16 assessment would be based on the average profits of the three years ended 31st December, 1914, and would equal £3440. The value of the machinery and plant account as written down for Income Tax purposes stood at £40,000 on 31st December, 1913, and depreciation was allowable at 5 per cent. = £2000 for 1914–15.

Thus the 1914–15 assessment would be as follows :—

	£
Assessable profits	1440
Less depreciation	2000
= Depreciation to be carried forward of . .	£560

1915–16 ASSESSMENT.

The assessable profit is £3440, less depreciation £560 carried forward and depreciation for the year of assessment.

The Machinery and Plant account is as follows :—

	£	£
31st December, 1913 . . .	40,000	
Less depreciation allowable, 1914–15	2,000	
		38,000
Plus additions less sales in year to 31st December, 1914 . . .		6,000
Value at 31st December, 1914 . .		£44,000

Depreciation at 5 per cent. = £2200.

The assessment would therefore be made on :—

	£	£
Profits		3440
Less depreciation carried forward . . .	560	
Less depreciation for year	2200	
		2760
		£680 = net assessment for 1915–16.

Had the assessment for 1915-16 been insufficient to cover the allowable depreciation the balance unallowed would be carried forward indefinitely until the profits would permit of the set-off.

Motor Cars for Professional Use.—In the case of doctors and other professional men using a motor car for professional purposes, claims for depreciation of cars are opposed by Surveyors of Taxes on the technical point of the assessments on professions being made under Case 2 of Schedule D on "professions, employments, or vocations" whereas Case 1 of Schedule D assesses "any trade, manufacture, adventure, or concern in the nature of trade" and sec. 12 of the 1878 Act allows depreciation in connexion with "any trade, manufacture, adventure, or concern in the nature of trade." It is contended by the Surveyors of Taxes that the said words in the 1878 Act, being identical with those in Case 1, and excluding the said words in Case 2, the 1878 Act does not apply to the latter Case.

Motor Cars were obviously not in the contemplation of the Legislature in 1878, but the elaboration of the depreciation provisions by the Finance Act, 1907, used the same words of limitation as the 1878 Act. However, in 1878 it was unnecessary to specifically include professions, as mechanical means of locomotion were non-existent and professions could not then have had anything of the nature of "machinery or plant." If the technical point is persisted in, it is not possible to obtain the allowance for depreciation, although from an

equitable point of view, the allowance should clearly be made. Moreover, owing to the rapid depreciation of motor cars due to age, an allowance for repairs or renewals would not overcome the difficulty.

The following table of allowances granted by the District Commissioners in the districts mentioned, was submitted to the Departmental Committee of 1905 :—

Nature of industry and district.	Rate per cent. of allowance.	Remarks.
Boot trade—		
Leicester	7½	On full value
Brewers—		
Cardiff	5	On written-down value
Collieries—		
Cardiff	5	On written-down value
Coal exporting plant—		
Cardiff	5	On written-down value
Dyers and trimmers—		
Leicester	7½	On full value
Do.	10	If justified on inquiry
Engineers—		
Leicester	7½	On full value
Cardiff	5	On written-down value
Hosiery—		
Leicester	7½	On full value and higher rate if justified on inquiry
Nottingham	5	On fixed machinery
Lace making—		
Nottingham	5	On full value
Do.	7½	On written-down value
Looms and spinning machines—		
Huddersfield	5	On motive plant
Do.	7½	On spinning, dyeing, carding, and finishing machinery
Oldham	5	On engines, boilers, and gearing
Do.	7½	On spinning machines
Newspaper and printing—		
Dundee	10	On printing machinery running double shifts
Glasgow	6	On ruling and bookbinding machines
Do.	6	On type, linotype machines, etc.
Do.	7½	To include renewal of type not charged to Revenue
Nottingham	8½	On written-down value
Cardiff	5	On written-down value

Nature of industry and district.	Rate per cent. of allowance.	Remarks.
Newspaper and printing—*continued*		
Cardiff	7½	On written-down value, for newspaper printing machines
Do.	15	On type
Sewing machines—		
Glasgow	10	On machines used in clothing factories. Replacements all charged to capital
Nottingham	10	
Ship repairing and shipbuilding plant—		
Cardiff	5	On written-down value
Spinning machinery and woolcombs—		
Bradford	7½	On written-down value, when machinery running day and night. Allowance reduced when heavy amounts charged for repairs and renewals
Tramways—		
Glasgow	4½	*Average over all.* per cent. Ducts 3 Cables 3 Poles and rosettes 2 Section boxes 3 Telephones 5 Depôt fittings 2 Electric power plant 5 Sub-stations plant 5 Car works machinery 7½ Permanent way plant 7½ Rolling stock 5 Punches 7½ Furniture 5
Weaving—		
Bradford	5	On looms
Blackburn	5	On fixed boilers, engines, and fixed machinery
Do.	7½	On loose machinery, etc.
Huddersfield	7½	On spinning, weaving, carding, finishing and condensing machinery
Do.	5	On motive plant, shafting, etc.

Abatements, etc.—In ascertaining total income for the purposes of abatements, exemptions, and other "relief" based upon "total income from all sources," and also in arriving at Super Tax liability, the *net* Schedule D assessment after allowance for depreciation is the aggregable amount. (See p. 332.)

In practice depreciation may be dealt with by the following methods :—

MUNICIPAL CORPORATIONS AND COMPANIES WORKING TRAMWAYS AND LIGHT RAILWAYS, GAS, WATER AND ELECTRICITY UNDERTAKINGS.

Scheme for determining the allowances to be granted for Wear and Tear in respect of the above undertakings.

Tramways.

Permanent Way.—Allowance for maintenance to cover depreciation.

Life.

1. The life of the permanent way is to be taken as twelve, fourteen, or sixteen years, according to the traffic thereon. The classification is to be based on the average car mileage per mile of track per annum of the financial year preceding the year of assessment, viz. :—

1. Not exceeding 50,000 car miles per mile of track—sixteen years.
2. Over 50,000 and not exceeding 75,000 car miles per mile of track—fourteen years.
3. Over 75,000 and not exceeding 125,000 car miles per mile of track—twelve years.
4. Over 125,000 car miles per mile of track—special consideration.

2. Where there are special circumstances, such as exceptional gradients, and the compulsory use of wood paving, etc., tending to show that the car mileage does not fairly

represent the wear and tear of the track, each such case is entitled to special consideration.

Cost of Renewals.

3. The cost of renewals, including setts or other paving, but excluding concrete foundations, should be taken at £4400 per mile of single track until the general renewal of the track takes place.

The cost of renewals in the case of a tramway situated abroad cannot be taken as necessarily amounting to £4400 per mile. It will be necessary to ascertain the nature of the track and its original cost, and the probable cost of renewal, having regard to the fact that much of the preliminary expenditure incurred when the line was first constructed will not recur.

Basis of Computation of Depreciation Allowance.

4. No allowance should be made in computing the assessable profits in respect of any expenditure on repairs or maintenance of the permanent way, but the allowance for depreciation should be computed at such a sum per annum as will, in the aggregate, over the determined life of the permanent way, be equal to the cost of renewal as above fixed, plus the estimated repairs for that period:—

Cost of renewal per mile (as above) . . .	£4400
Add *for example*:—	
Estimated cost of repairs at £100 per mile per annum, for an undertaking with a life of sixteen years	£1600
	£6000
Amount to be allowed per annum in lieu of depreciation, $\frac{1}{16}$	£375

5. The amount to be added in respect of ordinary repairs should be determined by taking the actual average expenditure

as shown in the accounts of the undertaking for the last three years, *i.e.* the three years preceding the initiation of the scheme, or such period less than three years as the undertaking has been in existence. If at the beginning of any year of assessment for which the allowance is being computed the mileage of the track differs from the average mileage during the three years above mentioned, the allowance under this head should be increased or diminished proportionately.

6. Repairs under this head should be understood to include renewals of special track work at junctions and cross-overs, which occur at frequent intervals.

Periodical Adjustment.

7. Inasmuch as the expenditure on repairs is expected to increase as the track begins to wear, in which case the figure to be adopted under this head, which is to be based on past experience, will be unsatisfactory, the amount of such estimate should come up for revision at the end of every five years, and an adjustment should be made by increasing or diminishing the allowance as the circumstances require, having regard to the basis of calculation outlined above.

The whole amount to be allowed for repairs in each year of the quinquennium can be varied only with variations in the mileage of the track, *i.e.* the amount to be allowed *per mile of track* is a constant quantity.

8. A strict account should be kept by the Corporation and the Surveyor, of the annual allowances, and of the actual expenditure on repairs and renewals; and at the end of ten or fifteen years (*i.e.* the second or third revision) or at such time as the general renewal of the track shall have taken place, the amount to be annually allowed should be reconsidered and increased or diminished for succeeding years as the ascertained facts shall show to be necessary, provided that under no circumstances shall the allowances for previous years be re-opened.

9. All expenditure on extensions and improvements should

be excluded from the working expenses for income-tax purposes; and the necessary additional allowance for depreciation on the lines suggested above (*i.e.* mileage) should be at once allowed on such expenditure, and added to the sum already allowable.

10. The allowance of £4400 for renewal of permanent way mentioned above is intended to apply to the overhead trolley system. Special arrangements should be made, on the lines of the foregoing in the case of the conduit, surface contact, or other system. The number of such cases is very small. As the circumstances vary very considerably in each case, the amount to be allowed for renewals should in the first instance be arrived at by arrangement with the Chief Inspector of Taxes.

Cables.

11. In addition to repairs, depreciation should be allowed at the rate of three per cent. per annum on the written-down value.

Overhead Equipment, i.e. *Trolley Wires and Connexions.*

12. No depreciation should be allowed, but all expenditure on maintenance and renewals should be charged as working expenses, as and when incurred.

Cars and other Rolling Stock.

13. Subject to the ensuing clause, expenditure on maintenance and renewals should be treated as working expenses, and allowed in lieu of depreciation.

14. Depreciation, however, should be allowed in lieu of renewals where the circumstances justify such an allowance, provided that a strict account is kept of all renewals, and that, if such renewals are charged to Revenue Account, they shall be shown separately in such account and added back in computing the assessable profits.

15. The allowance in such case should be seven per cent. per annum on the written-down value.

16. In any case, the annual expenditure on repairs is to be allowed as a deduction in computing the assessable profits.

General Plant and Machinery.

17. All other plant and machinery, including standards, brackets, and workshop tools, but excluding loose implements, office furniture, and small articles which require frequent renewal, should be bulked together and depreciation allowed thereon at the rate of five per cent. per annum on the written-down value, in addition to the cost of repairs.

The following computation of the allowance to be made for 1912–13 in the case of an undertaking having nine miles of the track in the three years preceding the quinquennium, but eleven miles at the beginning of the year of assessment, shows the working of the scheme. The life of the track is twelve years :—

Cost of renewal of eleven miles of track at £4400 per mile	£48,400
Add, for expenditure on repairs (the average actual expenditure for 1906, 1907 and 1908 on nine miles was £1480 = £164 per mile per annum = £1804 per annum for eleven miles) £1804 per annum for life of track, viz. twelve years	£21,648
Total cost of maintenance of eleven miles for the twelve years' life of track	£70,048
Allowance per annum	£5,834

Gas and Water Undertakings.

18. No depreciation should be allowed in any circumstances in respect of any portion of these undertakings.

19. All expenditure on repairs and renewals, but excluding extensions and improvements, is to be charged and allowed as working expenses, as and when incurred.

20. Provided that whenever any exceptional expenditure on *bonâ fide* renewals is incurred, and full effect cannot be given to its deduction in that year owing to the profits or gains chargeable with income-tax in that year being less than

the amount so expended, the balance of the said expenditure which has not been allowed may be carried forward and allowed in the following year or years, as is provided in the case of unallowed wear and tear by sec. 26 (3) of the Finance Act, 1907.

Electric Lighting Undertakings.

Cables.

21. In addition to repairs, allowance for depreciation may be granted at the rate of three per cent. per annum on the written-down value.

Plant and Machinery.

22. On all other plant, exclusive of loose tools, meters, and office furniture, depreciation may be allowed at the rate of five per cent. per annum on the written-down value, in addition to the cost of repairs.

Conduits.

23. No allowance should be made for depreciation; but annual expenditure on repairs and renewals may be allowed as working expenses, as and when incurred.

Meters, Loose Tools, and Office Furniture.

24. No allowance should be made for depreciation; but annual expenditure on repairs and renewals may be allowed as working expenses, as and when incurred.

General.

25. In all cases where depreciation allowances are granted, a strict account should be kept of the annual expenditure on renewals (and repairs in the case of tramway tracks), including replacements due to obsolescence, and of the amounts allowed for depreciation and obsolescence, whether under this arrangement or under any arrangement made prior hereto, and a readjustment should be made for the future, if necessary, at

the end of every five years, as detailed under "Tramways (Permanent Way)," subject, however, to the special provisions applicable to permanent way.

26. Where depreciation allowances other than those for the permanent way of tramways are granted, renewals should be carefully distinguished, and, if charged against revenue, they should be notified to the Surveyor, in order that they may be added back in arriving at the income-tax liability.

27. "Written-down value" means original prime cost, plus subsequent additions, less all allowances actually granted by the Revenue in respect of wear and tear.

28. These proposals are to take effect for the year 1908–9, and for years preceding in cases where claims of depreciation are awaiting settlement.

In the case of undertakings abroad this should read "1910–11."

29. The computations necessary for any future adjustment should be duly made, agreed and recorded each year, whether the accounts for the particular year under review show any assessable income-tax liability or not.

30. Where, in any cases, allowances for depreciation have been made which are now to be discontinued, and they have not been exhausted by renewals already effected, the amount of such unexhausted allowances should be determined by agreement between the Surveyor and the Corporation or Company, and deducted from the expenditure on future renewals as and when they are effected.

31. All cases of dispute should be referred to the Board through the Chief Inspector of Taxes.

Gas Undertakings other than those owned by Public Bodies.

This scheme has been approved by the Board of Inland Revenue, and has received the assent of a committee representing a large proportion of the Companies and other persons concerned, and the Institution of Gas Engineers; and

although it does not remove the matter in question from the jurisdiction of the District Commissioners, it is not anticipated that they will raise any difficulties when a satisfactory settlement is arrived at.

The scheme must be adopted in its entirety, if at all, and Gas Companies will not be entitled to the benefit of one portion while rejecting the remainder of the scheme.

If in any case the scheme applicable to Municipal Gas Undertakings has been adopted, no change is made except at the special request of the Company, and if any other arrangement is in force, which the Company do not wish to have disturbed, the case has to be submitted with full details to the Chief Inspector before any alteration is made.

The scheme is to be applied to 1912–13, and to all prior years so far as any claims of depreciation are awaiting settlement, but before any allowances are granted on this basis the Gas Company has to sign a copy of the scheme.

Scheme—Form of Agreement.

Plant, Machinery, and Mains.

1. No depreciation shall be allowed in respect of the plant, machinery, and mains, other than as specified hereinafter, but in lieu thereof all expenditure on repairs and renewals is to be charged in the Company's accounts for Income Tax purposes and allowed as working expenses, as and when incurred. All expenditure on extensions and improvements, where debited against Revenue, to be distinguished and excluded from the said allowances.

2. Provided that whenever any expenditure on such renewals is incurred, and full effect cannot be given to its deduction in the year when incurred, owing to the profits or gains chargeable with Income Tax in such year being less than the amount so expended, the balance of the said expenditure, which has not been allowed, may be carried forward and allowed in the following year or years as is provided in

the case of unallowed wear and tear by sec. 26 (3) of the Finance Act, 1907.

Gasholders.

3. In addition to repairs, depreciation shall be allowed at the rate of 3 per cent. per annum on the written-down value. Such value not to include tanks, except where constructed of steel or iron, and in no case is the cost of excavation to be included in the value upon which the depreciation allowance is computed.

Meters (Ordinary and Prepayment), Cookers and Gas Fires.

4. In addition to repairs, allowance for depreciation shall be granted at the rate of 10 per cent. per annum on the written-down value.

Services and Fittings.

5. No depreciation shall be allowed in respect of Services and Fittings, but in lieu thereof all expenditure shall be allowed as a trading expense as and when incurred.

"Services" are to be understood as representing the pipes which connect the street mains with the properties served.

"Fittings" are the pipes, pendants, and brackets within such properties, supplied by and at the cost of the Company.

Where fittings so supplied are removed by the Company at any time they shall be brought back into stock, if of any value, and re-issued without any charge against Revenue except for the cost of repairs necessary to enable them to be re-issued. In the event of their not being re-issued, Revenue shall be credited with the scrap value.

General.

6. In all cases where depreciation allowances are granted, renewals, if charged against Revenue, shall be carefully distinguished and notified to the Surveyor in order that they may be added back to profits for the purpose of arriving at the Income Tax liability.

7. If new works are erected, wholly or partially, on a new

site, in place of old works abandoned or demolished, a reasonable allowance shall be granted for renewals in respect of the displaced plant, so far as it is actually renewed, such allowance to have regard to the original cost of the displaced plant, less any depreciation that may have been granted, but such allowance shall not include the cost of preparing the new site or erecting foundations for the new plant.

8. All renewals of parts which do not destroy the identity of the original article shall be allowed as repairs, except so far as they constitute an extension, enlargement, or other similar improvement in value.

9. Where renewals are allowable under this scheme in lieu of depreciation, they shall be allowed notwithstanding that the cost thereof may not have been debited in the Company's accounts against Revenue.

10. "Written-down value" means original prime cost, plus subsequent additions (including renewals which have not been allowed for Income Tax purposes) less all allowances actually granted for Income Tax purposes in past years, in respect of depreciation.

11. "Expenditure" includes the sum expended on materials, labour, and incidentals.

12. This scheme shall take effect for the year 1912–13, and future years, and for years preceding where claims of depreciation are now awaiting settlement.

13. Where, in any case, allowances for depreciation have been made which are now to be discontinued, and they have not been exhausted by renewals already effected, the amount of such unexhausted allowances shall be deducted from the expenditure on future renewals as and when they are effected.

We desire to adopt the above arrangements and hereby undertake to fulfil the conditions thereof.

On behalf of .

Dated the day of 191 .

Chairman.

Secretary.

DISCOUNTS.

Discounts are assessable under Rule II. of Case 3 of Schedule D. (See p. 63.)

DIVIDENDS.

Dividends, etc., are assessable, under Case 3 of Schedule D, on the recipients in the following cases :—

(1) Dividends, annuities, and shares of annuities chargeable under Schedule C where the half-yearly payment shall not amount to 50*s.* (sec. 95 of 1842 Act).

(2) Dividends on Corporation Inscribed Stock where the half-yearly payment does not amount to 50*s.*

(3) Dividends on any amount of Government Stock purchased through the Post Office. (See p. 63.)

(4) Interest not exceeding £5 per annum paid or credited by the Post Office.

In the case of dividends on shares, etc., not within the above exceptions, the recipient receives the dividend less a deduction for tax, and the dividend warrant stipulates that tax has been paid by the Company. Thus a dividend of £20 for 1915-16 would be paid to the recipient as £20 less tax at 3*s.* in the £ = £17, the amount received.

"Free of Tax" Dividends.- In some cases dividends are paid "free of tax," *i.e.* Income Tax has been allowed for before arriving at the dividend to be declared, and the dividend paid is in reality a payment of that dividend plus Income Tax. Thus £17 paid "free of tax" would, with the 3*s.* rate, be equivalent to £20 subject to deduction, and there is therefore, as regards Income Tax, merely a "paper" distinction between the two methods, but it must be observed that in claims for repayment on account of abatement, etc., (see p. 333) repayment may also be claimed in respect of "free of tax" dividends, as the recipient's share of the profits of the concern of which he is a shareholder has borne tax by the assessment on the concern, exactly as if the dividends had been paid in the ordinary manner.

A dividend of £20 less tax equals a net dividend of £17 and the tax of £3 would be repayable. A dividend of £20 "free of tax" is a net dividend, therefore the tax repayable would be the difference between such dividend as would, when subjected to tax, be reduced to £20, *i.e.* £23 10*s.* 7*d.* less tax at 3*s.* in the £, which would give £20, and the tax of £3 10*s.* 7*d.* would be repayable.

The full dividend, before deducting tax, is adopted in arriving at total income for purposes of abatement, etc., and for repayment to the taxpayer (p. 334), and with the rate at 3*s.*, the "free of tax" dividend should be increased by one-fifteenth of its amount thus:

£1 dividend "subject to tax" = £1 — tax "free of tax" dividend, therefore the following formula may be used in converting "free of tax" dividends b to "subject to tax" dividends a:—

$$a = \frac{b}{\text{£1} - \text{rate in the £}}$$

Debenture Interest.—The Revenue refuse repayment in respect of debenture interest, paid "free of tax."

(See REPAYMENT, p. 402.)

DOCKS.

Docks are assessable under No. III. of Schedule A on the profits of the year preceding and are to be charged in the parish where they are situate except as follows:—

> The profits arising from the docks called the London Docks, the East and West India Docks, and Saint Katherine Dock respectively, situate in the county of Middlesex, shall be assessed by the Commissioners acting for the City of London. (Sec. 109 of the 1842 Act.)

DOMESTIC EXPENSES.

A deduction is prohibited by Rule 1 to 1st and 2nd Cases Schedule D (p. 82), in respect "of any disbursements, or expenses of maintenance of the parties, their families or

establishments," and "for any sum expended in any other domestic or private purposes distinct from the purposes of such trade . . . or such profession."

DOUBTFUL DEBTS.

(See BAD DEBTS, p. 99.)

DRAINS.

Drains are assessable under No. III. of Schedule A on the profits of the preceding year.

In *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted*, [1907] (*l*), it was contended by the appellant that a sewer which ran partly above and partly below ground was chargeable, if at all, under No. III. of Schedule A on the profits, which were *nil*, instead of under General Rule I. of Schedule A on the annual value as assessed by the Revenue, which value in this case was based on the Poor Rate value. Sewers are not specifically mentioned in No. III. of Schedule A, but it was sought to bring them within the word "drain" therein. It was held that the sewer fell to be assessed under General Rule I. of Schedule A, and EARL HALSBURY said:

> "The word 'drain' used by itself might perhaps bear the meaning that it is suggested by the Appellants it ought to bear, but when you look at the mode in which the word 'drain' is introduced and the other words with which it is associated, you see that its meaning depends upon a very familiar canon of construction, that where you have a word which may have a general meaning wider than that which was intended by the Legislature, when you find it associated with other words which show the category within which it is to come, it is cut down and over-ridden according to the general proposition, which is familiarly described as the *ejusdem generis* principle. Accordingly, the word 'drain' used in that sense is not included in the excepted businesses which are described in the section so as to make the word 'drain' applicable to the present question."

(*l*) A. C. 264; 71 J. P. 425; 76 L. J. K. B. 876; 97 L. T. 141; 23 T. L. R. 621; 5 L. G. R. 865; 5 Tax Cas. 230.

DRAWINGS OF PARTNERS.

No allowance is admissible for partner's drawings, which are assessed as part of the profits. (See p. 334.)

ELECTRIC LIGHT WORKS.

Electric Light Works are assessable under Schedule D, not under No. III. of Schedule A. Although they may be considered as similar in their use of land to gasworks, and as falling within the sweeping words "other concerns of the like nature" (p. 55), they were obviously not in the contemplation of the Legislature in 1842, when No. III. of Schedule A passed into law, but this point is not of material moment when general sweeping words are introduced, as it may be urged that the Schedule D provisions became law also in 1842, and that its charging provisions are not specific but general, and similarly had not Electric Light Works in contemplation.

Schedule A assessments are not made on the "annual value" of mains, pipes, wires, or way leaves (but see WATER-WORKS, p. 294).

(See also MINES, p. 290.)

EMBEZZLEMENT.

Loss from embezzlement is deductible.

EMPLOYEES' CONTINGENT INTEREST.

In *Walker* v. *Reith*, [1906] (*m*), the proprietor of a business, in order to secure continuity of the business after his death, provided by a deed of arrangement for the following:—

The net profits of the business to be annually divided among certain selected employees in certain shares. Ten per cent. only of the profits to be paid over to the said employees, and the remainder not to be drawn until the whole of the late owners' capital had been paid out, but in the meantime the employees' shares were credited to them. The employees' interests in the business did not vest until the capital had been

(*m*) 8 F. 381; 43 Sc. L. R. 245.

paid out, and there was no power in the employees to sell or dispose of such interests.

It was held that the 90 per cent. was not assessable on the employees who were not partners, and the case was distinguished from the example of a portion of a salary being held up or deferred under a contract of service, as the deferred portion was salary. "There is all the difference between a case of that kind, and one where the fund said to form part of a man's income may, from causes over which he has no control, never be his at all." (See p. 353.)

EXCESS PROFITS DUTY.

Excess Profits Duty (p. 413) forms a deductible expense for Income Tax purposes, sec. 35 of the Finance (No. 2) Act, 1915, providing that the duty shall be deducted "in computing the profits and gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid." With, *e.g.*, the duty chargeable under the said Act the accounting period is the trading year ending between 4th August, 1914, and 1st July, 1915, so that if the year ends on, say, 31st December, the duty would be deductible from the 1914 profits and fall into average for 1915–16, 1916–17, and 1917–18.

Where repayment of Excess Profits Duty has been made the amount repaid is to be treated as profit for the year in which repayment is received.

If the Income Tax assessment is made before the duty is ascertained the duty is reduced by the amount by which the Income Tax would have been reduced, and "if there is no excess profits duty" repayment is made.

EXHAUSTION OF ASSETS.

(See CAPITAL EXPENDITURE, p. 131.)

EXPERIMENTS.

A deduction is not allowed for a levy on colliery proprietors for experimenting, at the request of the Government, in coal

dust with a view to preventing explosions in mines. *Lochgelly Iron and Coal Co., Ltd.* v. *Crawford*, [1913] (*n*) (see MINES, p. 273).

FAIRS.

Rights of fairs are assessable under No. III. of Schedule A on the profits of the preceding year.

FARMERS.

Farmers may, instead of being assessed under Schedule B (see p. 39), elect to be assessed under Schedule D on the profits of the three preceding years, by giving notice in writing to the Surveyor of Taxes within two calendar months after 6th April in each year.

FERRIES.

Ferries are assessable under No. III. of Schedule A on the profits of the preceding year.

FINANCIAL COMPANIES.

The assessment of Financial Companies—which raise money which they lend at higher rates of interest than they pay—has been extensively connected with the question of the assessability of such companies on Colonial and Foreign Securities and Possessions under Cases 4 and 5 (p. 203), only on the amounts remitted to this country, or under Case 1 (p. 46) on the full profits. The Finance Act, 1914, sec. 5, has removed the limitation of assessability of certain Foreign and Colonial Securities and Possessions, thus leaving the full amount to be assessed irrespective of whether they have been remitted to this country or not. The section relates to "securities, stocks, shares, or rents," and is set out in full at p. 201.

Case 4 covers (see p. 202) "interest arising from securities"

(*n*) S. C. 810; 50 Sc. L. R. 597; 6 Tax Cas. 267.

abroad other than those chargeable under Schedule C (see p. 355) and the basis of assessment is the amount for the *current year*.

Case 5 (see p. 203) assesses "possessions" abroad (which includes dividends on shares) and the basis of assessment is the average of the *three preceding years*.

Interest.—It should be noted that interest is a distinct subject-matter of assessment (see p. 262), and, in the case of an Insurance Company, the Revenue has the right to make the assessment on the interest received instead of on profits, a discretion which is against the taxpayer on the profits being less than the interest (p. 243).

Management Expenses.—Section 14 of the Finance Act, 1915, allows deduction of management expenses when assessment is on income from investments, not on profits. See pp. 196, 243.

Debentures.—A deduction is allowed to Mortgage and Investment Companies of the cost of renewing existing debentures, but not in respect of the cost of raising fresh capital by means of debentures.

Mortgage Companies.—In *Scottish Mortgage Company of New Mexico* v. *McKelvie* (1886) (*o*) the Company was formed principally for the purpose of borrowing money in this country on debentures at a low rate of interest and lending it in the United States, together with the paid-up capital, at a high rate of interest.

One contention in the case as to the assessment being restricted under Case 4 of Schedule D to *remittances to this country* is now irrelevant owing to sec. 5 of the Finance Act, 1914 (*ante*).

The assessment was made under Case 4, and sustained in the Courts, on £5174, arrived at as follows, no deduction being made for debenture interest paid or due:—

(*o*) 24 Sc. L. R. 87; 14 R. 98; 2 Tax Cas. 165.

	£	s.	d.
Interest of money lent by the Company on the security of property in the United States of America, earned or accrued and brought into account in the year ended 31st December, 1884	6926	5	2
Transfer fees received	2	12	6
	6928	17	8

	£	s.	d.	£	s.	d.
Expenses of management in America	1193	5	10			
Expenses of management at home	562	0	7			
				1755	6	5
Amount assessed				£5173	11	3

The income was applied as follows:—

	£	s.	d.
Interest on debentures paid and accrued to 31st December, 1884	3094	18	1
Dividend of 7 per cent. to the shareholders	700	0	0
Extinction of the debit balance of the year 1883	499	10	7
Reduction of preliminary expenses	508	5	5
Carried forward	370	17	2
	£5173	11	3

The Company contended, *inter alia*, that the assessment should be made under Case 1 on the balance of the profits or gains amounting to £239.

The LORD PRESIDENT ruled that the concern was undoubtedly a trading company, and said that the duty might have been charged in this case as under the first Case of Schedule D; but that was not the question. When the duty is chargeable under alternative Cases it is open to the Revenue to adopt the Case most favourable to themselves. His Lordship agreed with the allowance of expenses of management in America, "because that cannot have been received in this country as part of the income derived from the foreign

securities." Case 4, under which the amount in question was assessed, dealt solely with amounts remitted to this country, and therefore the expenses in question would obviously not be received here, but as the Finance Act, 1914, sec. 5 (*ante*) has withdrawn the restriction as to remittance, leaving the *income* assessable, the contention that the expenses were not received in this country cannot now be advanced as the sole determining factor, and therefore it is open to argument that the expenses cease to be admissible, but see p. 194. His Lordship, in referring to the home management expenses, said, "But there are also deducted the expenses of management at home. Upon what principle that deduction is made I do not know, but as the Inland Revenue have chosen to make it, of course the other party will have the benefit of it." This dictum shows that his Lordship's allowance of the foreign expenses had reference solely to the question of remittance, but see p. 194 for statutory allowance of management expenses.

LORD SHAND said that the fourth case expressly provides for the assessment of money sent abroad for investment in foreign securities.

Interest on Colonial Advances. - In *Smiles* v. *Australasian Mortgage and Agency Co., Ltd.* (1888), (*p*) the company had a wool-broking business and made temporary advances on the security of second mortgages, or on wool and produce. The advances, with trifling exceptions, were not of fixed amount but fluctuated from time to time as the produce was realized.

It was held that the interest on the advances was chargeable under the 1st Case of Schedule D.

The LORD PRESIDENT was of the opinion that the trade the company was engaged in was partly that of a broker and partly that of a banker, and he distinguished the cases of *Scottish Mortgage Co. of New Mexico* v. *McKelvie* (*q*) and *Smiles* v. *Northern Investment Company of New Zealand*,

(*p*) 25 Sc. L. R. 645; 15 R. 872; 2 Tax Cas. 367.
(*q*) (1886), 24 Sc. L. R. 87; 14 R. 98; 2 Tax Cas. 165.

Limited (*r*), pointing out that the business in this case was of a very different description, and that the account between the Company and its customers was of the nature of a current account as between banker and customer.

> "The advances are made according to the amount of security held for the time. That may also be described as the nature of a commission agent's account; but it is the one or the other; and it seems to me to be not at all in the nature of investments of money, but on the contrary, advances of the most irregular and fluctuating description, just such advances as a commission agent makes upon the security of the goods in his hands in this country, or that a banker makes according to the state of the securities which he holds for the time. . . . I think this is proper trading and nothing else, and not investment of money upon securities."

His Lordship stated that a contrary decision would be most unjust, as if the Company were charged under Case 4 for "Interest" on advances upon fluctuating securities and made losses on the other part of their business they would be unable to set off the losses against the profits from the advances.

Sales of Securities.—In *Scottish Investment Trust Company* v. *Forbes* (1893) (*s*) the Company, in accordance with its memorandum of association, was able to vary its investments and its assets generally.

It was held that the profits made by realizing investments were chargeable to Income Tax, but that depreciation in book-value of other investments could not be set against the said profits.

The Company contended that the profits on sales had been charged to capital account and were therefore not assessable; that in the year in which the tax was charged the capital account had greater losses than profits; and that the business of the Company was to invest the capital of the Company in different bonds and stocks with the object of averaging risks, and to divide the dividends and interest received. The income

(*r*) (1887), 24 Sc. L. R. 530; 2 Tax Cas. 177.
(*s*) 31 Sc. L. R. 219; 21 R. 262; 3 Tax Cas. 231.

of the Company is derived from the dividends and interests of the Company's investments. The Company further urged that the directors of a limited Company were entitled to treat increment of value on part of their capital as a set-off against depreciation in value of other capital assets, so as to keep the capital value of their whole assets up to its proper standard, by retaining such profits in the capital account and not carrying them to revenue account.

The Surveyor of Taxes contended that the Company made a practice of realizing securities, and he referred to a dictum in *Northern Assurance Company* v. *Russell* (*t*) (see p. 248) that "where the gain is made by the Company (within the year of assessment, or the three years prescribed by the Income Tax Acts, Schedule D) by realizing an investment at a larger price than was paid for it, the difference is to be reckoned among the profits and gains of the Company."

The LORD PRESIDENT said that, from the Memorandum of the Company, the varying of investments was an essential feature of the business, being one of the appointed means of acquiring profits. In his view the position of the Company was entirely distinguishable from that of a private individual or an ordinary trader, and he therefore rejected the contention that increases on realization of stocks formed capital.

His Lordship, in referring to setting off losses, said that in the Company's report the sums in question were described as net profits on sales of securities during the year. He approved of the cited *dicta* in *Northern Assurance Company* v. *Russell*.

FIRE.

Loss of stock through fire is deductible in so far as it is not covered by insurance, but loss of the buildings does not form an admissible deduction.

FIRE INSURANCE PREMIUMS.

A deduction is permitted, in practice, for Fire Insurance premiums.

(*t*) (1889) 26 Sc. L. R. 330; 16 R. 473; 2 Tax Cas. 571.

FISHINGS.

Fishings are assessable under No. III. of Schedule A on the profits of the preceding year.

FOREIGN.

The question of "foreign" assessment (which term includes "colonial") may be divided into two classes:—

(*a*) Foreign Profits of British Residents.

(*b*) British Profits of Foreign Residents.

It is provided by sec. 2 of the Income Tax Act, 1853 (see p. 46), that Income Tax is chargeable as follows:—

(1) On profits from any kind of property situate abroad and belonging to a resident in the United Kingdom.

(2) On profits arising or accruing to any person residing in the United Kingdom, from any profession, trade, employment, or vocation carried on abroad.

(3) On profits of any person, resident abroad, from any property whatever in the United Kingdom, or from any profession, trade, employment, or vocation exercised within the United Kingdom.

Temporary Residence.—In order to deal with the taxation of temporary residents in and from the United Kingdom, sec. 39 of the Income Tax Act, 1842, provides as follows:—

> Any subject of Her Majesty whose ordinary residence shall have been in the United Kingdom, and who shall have departed from the United Kingdom and gone into any parts beyond the seas, for the purpose only of **occasional residence**, at the time of the execution of this Act, shall be deemed, notwithstanding such temporary absence, a person chargeable to the duties granted by this Act as a person actually residing in the United Kingdom, and shall be assessed and charged accordingly (in manner hereinafter directed) upon the whole amount of his profits or gains, whether the same shall arise from property in the United Kingdom or elsewhere, or from any allowance, annuity, or stipend (except as herein is excepted), or from any profession, employment, trade, or vocation, in the United Kingdom or elsewhere:
>
> Provided always, that no person who shall on or after the

passing of this Act actually be in the United Kingdom for some temporary purpose only, and not with any view or intent of establishing his residence therein, and who shall not actually have resided in the United Kingdom at one time or several times for a period **equal in the whole to six months in any one year**, shall be charged with the said duties mentioned in Schedule D as a person residing in the United Kingdom, in respect of the profits or gains received from or out of any possessions in any other of Her Majesty's dominions, or any foreign possessions, or from securities in any other of Her Majesty's dominions, or foreign securities; but nevertheless every such person shall, after such residence in the United Kingdom for such space of time as aforesaid, be chargeable to the said duties for the year commencing on the sixth day of April preceding:

Provided also, that any person who shall depart from the United Kingdom after claiming such exemption, and shall again return to the United Kingdom on or before the fifth day of April next after such claim made, shall be chargeable to the said duties as a person residing in the United Kingdom for the whole of the year in which such claim shall have been made.

The first part of the section covers profits generally but the first proviso relates to Foreign and Colonial "Securities" and "Possessions," see Cases 4 and 5 of Schedule D, p. 202.

Sec. 39 was dealt with by LORD MCLAREN in *Cooper* v. *Cadwalader* (p. 229), and it was pointed out that, in order to obtain the exemption, it must be proved that the claimant is—

(*a*) here for a temporary purpose only, *and*

(*b*) that he is not here with a view or intent of establishing a residence.

His Lordship stated that "if the argument is lame on one of the legs" the exemption does not apply as the claimant must "affirm both members of the double proposition."

Foreign Profits of British Residents.

The assessment of foreign profits of British residents has been materially affected by sec. 5 of the Finance Act, 1914, and many of the cases on the point are now of considerably diminished significance, as the prevailing contentions that

the foreign profits were assessable under Cases 4 or 5 of Schedule D on the amounts *remitted to this Country*, instead of under Case 1 on the full amounts, were affected by the withdrawal of the restriction as to remittance.

Sec. 5 of the Finance Act, 1914, reads :—

(1) Income Tax in respect of income arising from securities, stocks, shares, or rents in any place out of the United Kingdom shall, notwithstanding anything in the rules under the fourth and fifth cases in sec. 100 of the Income Tax Act, 1842, be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom to the same deductions and allowances as if it had been so received, and to the deduction (where such a deduction cannot be made under any other provision of the Income Tax Acts) of any sum which shall have been paid in respect of income tax in the place where the income shall have arisen, and to a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom; and the provisions of the Income Tax Acts (including those relating to returns) shall apply accordingly, and nothing in those provisions as to the receipt of sums in the United Kingdom shall be construed so as to render liable under those rules to income tax for the current or any subsequent year any sums which represent—

(*a*) income from any such securities, stocks, shares, or rents, on which income tax has been paid under this section : or

(*b*) income from any such securities, stocks, shares, or rents which was paid or became due before the sixth day of April nineteen hundred and fourteen :

Provided that this section shall not apply in the case of a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom.

(2) Any person aggrieved by any decision of the Commissioners of Inland Revenue on a question of domicile or residence under this provision shall have the same right to require those Commissioners to state a case on the question as an appellant has to require the general or Special Commissioners to state a case on a point of law and section 59 of the Taxes Management Act, 1880, and any rules made for the purposes of that section shall apply accordingly.

The above section was introduced to avoid foreign and

colonial income escaping taxation by being reinvested abroad, as Cases 4 and 5 only tax *remittances*. This section does not repeal these Cases but removes the question of remittance in respect of *securities, stocks, shares, or rents*, specifically *omitting businesses*. It provides, however, by (*b*) that income which has been capitalized in the past shall not be taxed on subsequent remittance to the United Kingdom, as was formerly the case under Cases 4 and 5, and by (*a*) this point is secured in respect of present and future income. See p. 244 as to the exclusion of income from investment of the foreign life insurance fund of a life insurance company.

Case 4 enacts that—

> The duty to be charged in respect of interest arising from securities in the British plantations in America, or in any other of Her Majesty's dominions out of the United Kingdom, and foreign securities, except such annuities, dividends, and shares as are directed to be charged under Schedule C of this Act.
>
> The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in the United Kingdom in the current year, without any deduction or abatement.

(See Schedule C, p. 355, for assessment of interest, annuities, dividends, and shares of annuities payable out of foreign or colonial *public* revenue.)

It is provided by sec. 71 (2) of the Finance (1909–10) Act, 1910, that Income Tax shall not be payable in respect of interest or dividends of any *securities of a foreign State or British possession* which are payable in the United Kingdom when it is proved to the satisfaction of the Board of Inland Revenue that the person owning the securities and entitled to the interest or dividends thereon, is not resident in the United Kingdom. By sec. 13 of the Revenue Act, 1911, it is provided that when the said securities are held under a trust, the beneficiary in possession is deemed to be the owner if he is the sole beneficiary in possession, and can, either by revocation of the trust or exercise of powers under the trust, call

upon the trustees at any time to transfer the securities to him absolutely free from any trust.

Repayment may be claimed within three years of the end of the year of assessment.

Case 5 enacts that—

> The duty to be charged in respect of possessions in the British plantations in America, or in any other of Her Majesty's dominions out of the United Kingdom, and foreign possessions.
>
> The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the actual sums annually received in the United Kingdom, either for remittances from thence payable in the United Kingdom, or from property imported from thence into the United Kingdom, or from money or value received in the United Kingdom, and arising from property which shall not have been imported into the United Kingdom, or from money or value so received on credit or on account in respect of such remittances, property, money, or value brought or to be brought into the United Kingdom, computing the same on an average of the three preceding years, as directed in the first case, without other deduction or abatement than is hereinbefore allowed in such case.

(See p. 210 for definition of "possessions.")

Deductions.—Sec. 5 allows, in regard to income which is not remitted here, "the same deductions and allowances" as if it had been received in the United Kingdom, *i.e.* non-remittance is irrelevant to assessability, and the section covers items mentioned in Cases 4 and 5, therefore the *general* deductions are governed by the provisions of these Cases. Case 4, which covers securities, prohibits deduction, and Case 5, which covers other income derived from abroad (and which is not assessable under Case 1 (p. 46)), admits such deductions as are admissible under Case 1, which thereby extends to Case 5 the deduction of any expenses incurred "wholly and exclusively" for the purpose of the production of the income, but there is no allowance for expenses connected with the distribution thereof.

In *Aikin* v. *Macdonald's Trustees* (1894) (*u*), the Trustees

(*u*) 32 Sc. L. R. 85; 22 R. 88; 3 Tax Cas. 306.

distributed amongst beneficiaries the income from trust property abroad, and it was held that the expenses incurred in managing the trust could not be deducted and that the deduction authorized is that incurred prior to the receipt in the United Kingdom.

The assessable income in the case, *e.g.* of rents is the net amount after paying outgoings such as repairs.

Sec. 5 further authorizes allowance for foreign or colonial income tax, which, apart from securities, was permissible prior to the passing of the section. (See "Foreign Tax," p. 231.) Interest, annuity, or other annual payment, payable out of the income to a person residing abroad is also deductible, the restriction as to residence is necessary owing to the fact that interest payable to a person residing in the United Kingdom would be assessable income subject to deduction of tax by the payer. (See p. 256.)

In the case of private individuals having pure investments abroad, the question of assessability under Case 1 does not arise, but with Companies such as Insurance and Financial, it was urged by the Crown that the foreign investments were held as part of the business of the Company, and that the foreign profits should fall into the general profits, but as, in many instances, the Companies did not have the foreign profits remitted home, it was sought to avoid their taxation by bringing them under Cases 4 or 5.

As will be seen from sec. 39 of the 1842 Act (*ante*), liability to Income Tax under Cases 4 and 5 does not attach if the residence in the United Kingdom is temporary *and* does not extend to a period of six months in the year.

With trading concerns, assessment under Cases 4 and 5 was generally preferable to assessment under Case 1, but since the withdrawal of the stipulation as to remittance, Case 1 has the advantage of allowing the foreign profits to fall into the general profits, and thereby reducing the assessability where a loss is made, whereas Cases 4 and 5, which are comparable with the assessment of interest (p. 262), involve a gross and

isolated assessment. Thus, assuming that a company having profits from foreign investments of £1000, made a loss of £2000 before crediting the foreign profits, the assessment of the latter under Case 1 would be *nil* as the loss would be merely reduced to £1000, whereas under Cases 4 and 5 an assessment on £1000 would be made irrespective of the general loss. (See, however, p. 243.) Moreover, under Case 4 assessment is not made on average (*ante*).

An aspect of foreign profits of British residents arises in connexion with British trading Companies having interests in concerns abroad. If the foreign concerns are part and parcel of the home concern, sec. 2 of the 1853 Act is sufficient to bring their profits in the general assessment on the business under Case 1, but in the cases which went to the Courts prior to the Finance Act, 1914, the assessability under the respective Cases was determined in certain circumstances which are referred to below. These cases are of considerable moment owing to the importance and controversial nature of the question of assessment of foreign profits.

As regards *trading* the assessment falls under—

Case 1, if the trade is *wholly or partly* carried on in the United Kingdom, and conversely under—

Case 5, if *no part* of the trade is carried on in the United Kingdom.

Sec. 5 of the Finance Act, 1914, does not cover trading profits (*ante*).

Assessable under Case 1.

Temporary Advances.—Interest on temporary advances made by a wool-broking company on security of second mortgages or on wool and produce, falls under Case 1. The advances fluctuated in amount from time to time as the produce was realized. *Smiles* v. *Australasian Mortgage and Agency, Ltd.* (1888) (*x*).

This case was distinguished from *Scottish Mortgage*

(*x*) 25 Sc. L. R. 645; 15 R. 872; 2 Tax Cas. 367.

Company v. *McKelvie* (p. 194), and *Smiles* v. *Northern Investment Company* (p. 196), and the LORD PRESIDENT pointed out that although these Companies, who borrowed money here to make investments in securities abroad, were trading companies and might have been assessed under Case 1 on profits of trade, they were equally within Case 4 because their profits consisted distinctly of interest upon "colonial securities," whereas, in the case in question, the advances were not in the nature of investments of money, but advances of the most irregular and fluctuating description. His Lordship materialized the vital distinction between Case 1 and Case 4 by stating that the injustice of assessment under Case 4 was apparent by—

> "I think this is proper trading and nothing else, and not investment of money upon securities. . . . Supposing that they had a very large amount of advances upon such fluctuating securities as those, and that they are held to have received interest upon these in this country within the meaning of the Fourth Case, and that upon the other branch of their business they have sustained very heavy losses—losses which they require all the returns from these advances to compensate and wipe off, the result would be that, instead of setting one part of the business against the other, the profit upon these advances against the losses upon other transactions, they would be compelled to pay income tax upon that part which consists of advances upon securities of wool, and discount of bills, and everything of that kind, instead of being allowed to take the profit on the one part of their business, and set it against the loss upon the other part of their business."

Railway Abroad.—An English Company, with the control and direction of the business in England, was formed in order to make and work a railway in Brazil. All the meetings were held in London, where the accounts were kept and dividends declared. It was held that the Company were chargeable under Case 1 on the whole of the profits and not under Case 5. *San Paulo (Brazilian) Railway Company, Ltd.* v. *Carter*, [1896] (*y*).

(*y*) A. C. 31; 65 L. J. Q. B. 161; 73 L. T. 538; 44 W. R. 336; 3 Tax Cas. 407.

The Company contended that the Railway constituted a "foreign possession" within Case 5.

LORD WATSON cited a rule relating to trades, that "every interest in the profits of trade belonging to a person who is within the meaning of the Acts resident in the United Kingdom, must be charged under the First Case of Schedule D, if the trade is carried on either wholly or partly within Great Britain or Ireland, and is chargeable under the Fifth Case, if the trade is exclusively carried on in any of Her Majesty's dominions out of the United Kingdom."

The above case was followed in *Denver Hotel Co., Ltd.* v. *Andrews*, [1895] (*z*), where an hotel in the United States was acquired by the Company, which was formed for the purpose. The hotel was managed by a servant of the Company, and the registered office of the Company was in London, and dividends were declared, accounts kept, and meetings held in England. Dividends of English shareholders were paid in England, and of American shareholders in America out of funds there.

Bank.—An English bank, with head offices in London, had branches abroad, and was held to be assessable on the whole profits under Case 1. Meetings were held in London and the business directed from there: *London Bank of Mexico* v. *Apthorpe*, [1891] C. A. (*a*).

THE MASTER OF THE ROLLS ruled that the Company was carrying on one business, in England, and that some transactions were carried out abroad, but at the direction and will "of the masters and owners of that business resident in London."

> "If a person carries on two businesses, one in England, which he carries on in England in the ordinary sense of the word, he may carry on another wholly distinct from that first business, a business abroad, if the business abroad is carried on wholly distinct from the business in England, you must not charge the two together. You must deal with the one in

(*z*) 43 W. R. 339; 11 T. L. R. 238; 3 Tax Cas. 356.
(*a*) 2 Q. B. 378; 60 L. J. Q. B. 196, 653; 65 L. T. 601; 39 W. R. 564; 3 Tax Cas. 143.

England as a business carried on in England, and with the other as a business carried on solely abroad, and assess accordingly."

Oil Wells.—A Company formed to acquire and work oil wells in Galicia had the registered office at Westminster, where meetings were held and dividends declared and paid. All the shareholders were resident in the United Kingdom. The assessment was held to fall under Case 1. *Grove* v. *Elliots and Parkinson*, [1896] (*b*).

Foreign Breweries.—An English Company acquired a brewery in the United States from an American Company, and as the laws of the State of Illinois prohibit alien corporations from holding real property, the American Company was kept in being. The majority of the shares in the English Company were held in America, where the manufacture and sale of the beer was carried on. The entire control of the American Company lay with the directors of the English Company, but such power was delegated to a committee of management in America, consisting of the former directors of the American Company. The books relating to the American business were kept in America, but reports were sent to and considered in England. The meetings of the English Company were held in England, where dividends were declared and the general books kept. Dividends on shares of the English Company held in America, were paid there out of the profits of the brewery, and only sufficient to pay the English dividends and expenses was remitted to England. *St. Louis Breweries, Ltd.* v. *Apthorpe* (1898) (*c*).

WRIGHT, J., in deciding that the assessment should be under Case 1 on the whole of the profits, said that the business carried on by the English Company was, as expressed in their Articles, the business of managing the American company in the interests of the English shareholders, and that the business

(*b*) 3 Tax Cas. 481.
(*c*) 79 L. T. 551; 63 J. P. 135; 47 W. R. 334; 15 T. L. R. 112; 4 Tax Cas. 111.

was therefore carried on by the English Company, all necessary acts being done in London.

> "Upon the question of fact which has been submitted to us here, I myself entertain no doubt that the English Company is carrying on effectively a business, and that the nature of that business was, through the possession of a preponderating influence in the American Company, to manage its affairs."

Business Abroad. A person resident in Aberdeen was the sole owner of a business in Canada, which business was carried on by managers who had no power to act apart from the expressed or implied authority of the said owner who was alone entitled to the profits and liable for the losses. It was held that the assessment was to be made under Case 1 and that it was irrelevant that the owner never exercised his power of control. *Ogilvie* v. *Kitton*, [1908] (*d*).

Lord Stormonth Darling, referred to the House of Lords, decision in *San Paulo Brazilian Railway Company, Ltd.* v. *Carter* (p. 206), that assessment must be made under Case 1 on the balance of the profits or gains of the trade when the trade is carried on either wholly in the United Kingdom or partly within and partly outside the United Kingdom. The "head and brain of the trading adventure" were in Aberdeen, weekly statements of the transactions of the business were sent there, and the owner there had the sole right to manage and control every department. His Lordship disposed of a contention that the owner never attempted to exercise his control, by pointing out that the right of control was vested in the owner who might at any moment exercise it, and *Colquhoun* v. *Brooks* (p. 210) (*e*) was cited as holding that a person cannot escape from liability under Case 1 unless he is able to show that no part of the trade is carried on within the United Kingdom.

Lord Ardwall expressed a doubt as to whether the mere possession of "full control" by a person in this country

(*d*) S. C. 1003; 45 Sc. L. R. 725; 5 Tax Cas. 338.
(*e*) (1889), 14 App. Cas. 493; 59 L. J. Q. B. 53; 61 L. T. 518; 38 W. R. 289; 2 Tax Cas. 490.

brings the business over which such control exists, within the category of a business partly carried on in this country, but he decided that the business in question was partly carried on in this country.

Investments Abroad.—(See *Liverpool and London and Globe Insurance Co.* v. *Bennett*, at p. 255.)

Assessable under Cases 4 and 5.

Partner in Firm Abroad.—A *sleeping* partner in an Australian firm carrying on business entirely abroad was held to be assessable under Case 5 on "foreign and colonial possessions." *Colquhoun* v. *Brooks* (1889) (*f*).

LORD FITZGERALD stated that the Australian firm did not appear to carry on any portion of their business in this country, and that the partner in question did not appear to have taken any active part in the conduct of the business.

LORD HERSCHELL defined "possessions" in Case 5 as—

> "When, therefore, the term 'possessions' is employed it seems to indicate an intention to cover by it something more than 'property.' And it is difficult to see why, unless the intention were to embrace something more, the latter word was not used. 'Possessions' is a wide expression; it is not a word with any technical meaning; the Act supplies no interpretation of it. And I cannot see why it may not fitly be interpreted as relating to all that is possessed in Her Majesty's dominions out of the United Kingdom, or in foreign countries. And if so, I do not think any violence would be done to the language if it were held to include the interest which a person in this country possesses in a business carried on elsewhere."

LORD MACNAGHTEN also held that the word "possessions" is to be taken in the widest sense possible, as denoting everything that a person has as a source of income.

The following provision, having the professed intention of placing "a private firm in the same position as a Company" is enacted by sec. 10 of the Finance Act, 1914:

(1) Where any trade or business is carried on by two or

(*f*) 14 App. Cas. 493; 59 L. J. Q. B. 53; 59 L. T. 850; 38 W. R. 289; 2 Tax Cas. 490.

more persons in partnership, and the control and management of such trade or business is situate abroad, the said trade or business shall be deemed to be carried on by persons resident outside the United Kingdom and the said partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the said partnership are resident in the United Kingdom and that some of the trading operations of the said partnership are conducted within the United Kingdom.

(2) Where any part of the trade or business of a partnership firm whose management and control is situate abroad consists of trading operations within the United Kingdom, the said firm shall be assessable in respect of the profits of such trading operations within the United Kingdom to the same extent, and no further, than a person resident abroad is assessable in respect of trading operations by him within the United Kingdom notwithstanding the fact that one or more of the members of the said firm are resident in the United Kingdom, provided that for the purpose of assessing any such firm in respect of the profits of the said trading operations within the United Kingdom an assessment may be made on the said firm in respect of the said profits in the name of any partner resident in the United Kingdom.

Mortgage Company.—Where a mortgage company raised money in this country and invested it abroad in securities at a higher rate of interest, the interest received is assessable under Case 4. *Scottish Mortgage Company of New Mexico* v. *McKelvie* (1886) (*g*). The company contended that the assessment should be under Case 1 on the profits.

The Lord President observed that this was undoubtedly a trading Company, and that the duty might have been charged under Case 1 on the balance of the profits or gains, but the question at issue was whether it could be lawfully charged under Case 4 on interest accruing from foreign securities. He pointed out that where an item is assessable

(*g*) 14 R. 98; 24 Sc. L. R. 87; 2 Tax Cas. 165.

under Case 1 *or* Case 4, the Revenue has the option of choosing the case most favourable to the Revenue (see p. 243).

Trust Company.—An English Trust Company was formed to acquire shares in English and foreign companies manufacturing explosives, and the dividends on the shares in the foreign companies were retained abroad, as the profits from the English shares were sufficient to pay dividends to shareholders resident in the United Kingdom. It was held that the assessment should be made under Case 5, as the shares in the foreign companies were "foreign possessions," and that the Company did not trade or carry on a manufacturing business, but it merely invested its capital in buying shares in subsidiary companies. Two of the latter carried on business in the United Kingdom, while the remaining four did not. *Nobel Dynamite Trust Co.* v. *Wyatt*, [1893] (*h*).

Insurance Companies.—(See Insurance Company, p. 242.)

Company holding Shares in another Company.—An English Company was formed to bring all Kodak companies throughout the world under one control, and the English company acquired 98 per cent. of the shares of the American Kodak Company, and retained the services of the founder and manager of the American business. The owners of the balance of 2 per cent. of the shares were independent of the English Company, and the latter gave power of attorney to the American manager and two other persons in America to hold its proxies to vote at meetings of the American Company. Goods were bought and sold between the two companies in the ordinary way.

It was held that the American Company was not the business of the English Company and assessable under Case 1, but that the control of the latter Company over the former was the control of shareholders only, and therefore assessable under Case 5. *Kodak, Ltd.* v. *Clark*, [1903] (*i*).

(*h*) 2 Q. B. 499; 62 L. J. Q. B. 525; 69 L. T. 561; 42 W. R. 173; 3 Tax Cas. 224.

(*i*) 1 K. B. 505; 72 L. J. K. B. 369; 88 L. T. 155; 51 W. R. 459; 4 Tax Cas. 549.

The above case was followed in *Stanley* v. *The Gramophone and Typewriter, Ltd.*, [1908] C. A. (*k*). A German Company was formed by uniting other companies, one of which was an English Company whose undertaking was subsequently acquired by The Gramophone and Typewriter, Ltd. The latter Company acquired *all* the shares of the German Company.

Bearer Bonds. (See also Insurance Companies, p. 242.)

An Insurance institution invested money abroad in bearer bonds, and the interest received became part of the income of the Institution. The bonds were sent to this country and sold. It was held that the assessment should be under Case 4. *Scottish Provident Institution* v. *Farmer* (1912) (*l*).

Alteration of Articles. An English Company acquired hotels in Egypt, and altered its Articles of Association so as to permit, not merely a local board in Egypt, but for investing the Egyptian Board with the exclusive management and control of the Egyptian business. The Special Case found that this was not a mere form, but that the trade had since been carried on in accordance with those altered articles. It was held that the Company were taxable under Case 5 on remittances. *Egyptian Hotels, Ltd.* v. *Mitchell*, [1915] H. L. (*m*).

The MASTER OF THE ROLLS said in the Court of Appeal that the whole question was whether the Company's trade had been carried on in England in the sense that contracts had been made there, or that there had been such a control by the general board in England as brought the profits earned, within the Income Tax Acts. He held that the fact that the General Board might starve out the Egyptian Board because the remuneration of the Egyptian Board depended on the General Board, did not amount to carrying on business by the General Board, neither was the fact that the General Board were the only people who could raise fresh capital material, nor did the fact that the

(*k*) 2 K. B. 89; 77 L. J. K. B. 834; 99 L. T. 39; 5 Tax Cas. 358.
(*l*) Sess. Cas. 452; 49 Sc. L. R. 435; 6 Tax Cas. 34.
(*m*) A. C. 1022; 59 S. J. 649; 31 T. L. R. 546; 6 Tax Cas. 542.

London Board could determine how much of the profits were to be distributed make any difference.

This recent case is of considerable importance as it decided that an alteration of the Articles is effective in avoiding the whole profits of the trading carried on abroad, being assessed. Moreover, the MASTER OF THE ROLLS held that his decision was not affected by decisions in previous cases.

CHANNELL, J., pointed out that spending the profits of a business is not carrying on the business, nor is any other way of dealing with the profits, any more a mode of carrying on the business.

In the House of Lords, on the appeal of the Crown, opinion was equally divided and the appeal was, therefore, dismissed. LORD PARKER supported the rule that where the *whole* or *part* of a business is carried on in this country the *whole* profits must be assessed under Case 1, and he stated that although in *Colquhoun* v. *Brooks* (1889) (p. 210) the latter was a *sleeping* partner he was not so dealt with in the partnership deed and he had power at any time to take up active management but had not done so during the period of assessment. *San Paulo (Brazilian) Railway Co., Ltd.* v. *Carter* (1896) (p. 206) was supported, and his lordship stated that no single act had been done in or directed from this country by way of participation in or furtherance of the trade of the company during the period covered by the assessment. The trade was that from which the profits could arise, not the business of disposing and dividing such profits when they had arisen, and unless some act in carrying on the business is done or directed by a person resident in the United Kingdom, the business is wholly carried on abroad and, therefore, not assessable.

Place of Assessment.—An important question was raised in *Rex* v. *Kensington Income Tax Commissioners ex parte Aramayo*, [1916] H. L. (*a*), and resulted in sec. 32 of the Finance Act (No. 2), 1915, which repealed sec. 108 of the 1842 Act, and provided that a person may be assessed by the Com-

(*a*) A. C. 215; 84 L. J. K. B. 2169; 59 S. J. 715; 31 T. L. R. 606.

missioners for any place where he ordinarily resides whether or not he is engaged in any trade or employment. Assessments were made in South Kensington in respect of foreign possessions under Case 5. These assessments were not appealed against, but a rule *nisi* was obtained for a writ of prohibition to prohibit the Kensington Commissioners from proceeding on any of those assessments, on the following grounds:—

The whole of such profits were derived from foreign possessions and were received in the City of London and not elsewhere, and, under sec. 108 of the Income Tax Act, 1842, were only assessable by the Commissioners acting for the City of London.

A further ground was subsequently urged that sec. 106 of the 1842 Act restricts assessment to that by the Commissioners of the place where the business was carried on, viz. the City of London.

Sec. 106 enacts that—

> Every person engaged in any trade, manufacture, adventure, or concern, or any profession, employment, or vocation, shall be chargeable by the respective Commissioners acting for the parish or place where such trade, manufacture, adventure, or concern shall be carried on, or where such profession, employment, or vocation shall be exercised, whether such trade, manufacture, adventure, or concern shall be carried on, or such profession, employment, or vocation shall be exercised, wholly or in part only in the United Kingdom.

Sec. 108 enacted that foreign possessions or securities might be stated to and assessed by the Commissioners for London, Bristol, Liverpool, or Glasgow, whichever was nearest to the place at which the income was imported.

SWINFEN EADY, L.J., supported the following previously expressed dicta on the question of prohibition lying when Commissioners act without jurisdiction:—

> "My view of the power of prohibition at the present day is that the Court should not be chary of exercising it, and that whenever the Legislature entrusts to any body of persons other than to the superior Courts the power of imposing an obligation

upon individuals the Courts ought to exercise as widely as they can the power of controlling those bodies of persons if those persons admittedly attempt to exercise powers beyond the powers given to them by Act of Parliament."

His Lordship said that the special provisions with regard to Schedule D begin with sec. 100. Sec. 106 provides for the districts in which every person is to be charged or chargeable to the said duties in Schedule D. Every person engaged in any trade (which is the case of the appellant), shall be chargeable by the respective Commissioners acting for the parish or place where such trade shall be carried on. The section then proceeds: "And in order that the place where the said last-mentioned duties are to be charged may be ascertained," every person is required, on delivering a list or statement, to deliver a declaration in writing, signed by him, "declaring in what place he is chargeable." In his Lordship's opinion sec. 106 determines where and where alone a person may be assessed to the duties in Schedule D, subject only to the alternative provisions of sec. 108, which give an option to the person liable to assessment.

British Profits of Foreign Residents.

The assessment of foreign residents involves essentially a question of whether the foreign resident is assessable here in his own name, or is assessable through an agent. As provided by sec. 2 of the 1853 Act, there is assessability in respect of the property, or the trade, profession, or employment carried on in the United Kingdom, even though the person so holding or carrying on is not a British subject.

Contracts.—The liability is to a material extent determined by the question of contracts, and it is established that liability attaches if :—

(*a*) Contracts are made in the United Kingdom and delivery is effected here.

(*b*) Contracts are made in the United Kingdom and delivery is effected abroad.

(*c*) Contracts are made abroad but delivery given through an agent in the United Kingdom.

Liability does not attach if both contracts and delivery are made and given abroad, but see sec. 31 of the Finance (No. 2) Act, 1915 (*post*).

Agents.—The liability of agents is governed by sec. 41 of the Income Tax Act, 1842, which enacts that—

> Any person not resident in the United Kingdom, whether a subject of Her Majesty or not, shall be chargeable in the name . . . of any factor, agent, or receiver, **having the receipt of any profits or gains** arising as herein mentioned, and belonging to such person, in the like manner and to the like amount as would be charged if such person were resident in the United Kingdom, and in the actual receipt thereof; and every such . . . agent, or receiver shall be answerable for the doing of all such acts, matters, and things as shall be required to be done by virtue of this Act in order to the assessing of any such person to the duties granted by this Act and paying the same.

The interpretation of the above section was dealt with in *Grainger and Son* v. *Gough* (see p. 223), and it was held that the words "having the receipt of any profits or gains" control the word "agent" as well as the word "receiver," and LORD MORRIS stated that "there is no reason why an agent should be chargeable who was not in *receipt* of profits or gains."

In *Crookston Bros.* v. *Furtado* (p. 229) this dictum was said to mean "*lawfully* in receipt," and that an agent is not *lawfully* in receipt of money due to the principal under a contract made in the name of the principal "because the purchaser chooses or is induced by the agent to make the cheques payable to him." It was further held that it is clear that the contemplation of the statute was that agents should only be liable for their principals when "they had in their own hands the means of recouping themselves by having the receipt in money of profits and gains belonging to their principals." To assess the trader direct is of course a difficult proceeding.

The agent should only be charged when the principal cannot be personally assessed, owing to absence. Accepting Lord Morris's dictum, an assessment could not be made on

the agent in question if "payment were made direct to the trader abroad," except that sec. 31 of the Finance (No. 2) Act, 1915, makes the following important amendment with a view to assessing foreigners who, by means of collusive agreements, trade here through agents but escaped tax on the previously existing law.

Sec. 31 (1).—Section forty-one of the Income Tax Act, 1842 (which relates to the charge of income tax in special cases) shall, so far as it relates to the taxation of non-residents, be extended—

(*a*) so as to make non-resident persons chargeable to income tax in the name of any branch or manager as well as in the name of any factor, agent, or receiver; and

(*b*) so as to make non-resident persons so chargeable, although the branch, factor, agent, receiver, or manager **may not have the receipt of the profits or gains of the non-resident.**

(2) A non-resident person shall be chargeable in respect of any profits or gains arising, whether directly or indirectly, through or from any branch, factorship, agency, receivership, or management, and shall be so chargeable under section forty-one of the Income Tax Act, 1842, as amended by this section, in the name of the branch, factor, agent, receiver, or manager.

(3) Where a non-resident person not being a British subject or a British, Indian, Dominion, or Colonial Firm or Company, or branch thereof, carries on business with a resident person, and it appears to the Commissioners by whom the assessment is made that, owing to the close connexion between the resident and the non-resident person, and to the substantial control exercised by the non-resident over the resident, the course of business between those persons can be so arranged, and is so arranged, that the business done by the resident in pursuance of his connexion with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise from that

business, the non-resident person shall be chargeable to income tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(4) Where it appears to the Commissioners by whom the assessment is made or, on any objection or appeal, to the general or special Commissioners that the true amount of the profits or gains of any non-resident person chargeable in the name of a resident person with income tax cannot in any case be readily ascertained the Commissioners may, if they think fit, assess the non-resident person on a **percentage of the turnover** of the business done by the non-resident person through or with the resident person in whose name he is chargeable, and in such case section fifty-three of the Income Tax Act, 1842, shall extend so as to require returns to be given of the business so done by the non-resident through or with the resident in the same manner as returns are to be given under that section of the profits or gains to be charged.

(5) The amount of percentage shall in each case be determined, having regard to the nature of the business, by the Commissioners by whom the assessment on the percentage basis is made, subject, in the case of an assessment made by the additional Commissioners, to objection or appeal to the general or special Commissioners.

If either the resident or non-resident person is dissatisfied with the percentage determined either in the first instance or on objection or appeal by the general or special Commissioners he may, within four months of that determination, require the Commissioners to refer the question of the percentage to a referee or board of referees to be appointed for the purpose by the Treasury, and the decision of the referee or board shall be final and conclusive.

(6) Nothing in section forty-one of the Income Tax Act, 1842 (as amended by any subsequent enactment or by this section), shall render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent, not being an authorized person carrying on the

non-resident's regular agency or a person chargeable as if he were an agent in pursuance of this section, in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

(7) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of this section in the name of a resident person shall not of itself make him chargeable in respect of profits arising from those sales or transactions.

(See p. 355 for Assessment when dividends, etc., are paid through an agent, and p. 385 for DEDUCTION of Tax.)

Cable Companies.—A foreign Company had submarine cables, three being connected with the United Kingdom, and others not so connected. The Company had offices here and also worked land wires, but derived no profit from the latter. *Erichsen* v. *Last* (1881), C. A. (*o*).

In sending a message from this country to *e.g.* Japan, the message would pass over: (1) The lines of the Post Office in this country, (2) the marine cables of the Company, (3) land lines in Denmark, belonging to the Danish Government, (4) cables in the Baltic belonging to the Company, (5) land lines in Russia, belonging to the Russian Government, and (6) cables south and east of Russia belonging to the Company.

The total charges from the handing-in station in the United Kingdom to the place of destination abroad were, except as hereinafter stated, collected and received by the Post Office Telegraph Department, which retained out of such total charges the sums due to it out of agreements in respect of messages sent from the United Kingdom to abroad and received in the United Kingdom from abroad, and handed over the balance to the Company, which in its turn retained out of such balance the sum due to the Company in respect of the transmissions of messages over the cables and lines of

(*o*) 8 Q. B. D. 414; 51 L. J. Q. B. 86; 45 L. T. 703; 46 J. P. 357; 30 W. R. 301; 1 Tax Cas. 351, 357; 4 Tax Cas. 422.

the Company, and paid over the residue to the various Governments and Companies respectively entitled to the same.

By special arrangement with the Post Office, the Company received payment direct from a few firms who desired to hand in their messages direct to the Company, and accounted, out of such receipts, to the Post Office.

The expenses incurred by the Company in the transmission of messages over the said separate wires in the United Kingdom exceeded the earnings received by the Company in respect of the same, and no profits were made by the Company from the use of the land lines in the United Kingdom.

LINDLEY, J., decided that the Company were assessable on the profits which accrued to them here from carrying on their business in this country, *i.e.* on the net profits from the sums received here, and he was of the opinion that the Company did not carry on business in the United Kingdom, but that it did not follow that the Company did not receive profits from a trade exercised here.

The MASTER OF THE ROLLS said—

> "Now, it appears to me a plain case of carrying on trade in this country; in the first place they generally receive payment in this country for messages sent from abroad, and they do transmit those messages from stations in this country abroad. I think either will do, and I think both will do to make it carrying on a trade. I think a carrier who simply regularly undertakes the carriage of goods abroad for money paid in this country as part of his ordinary business would be carrying on trade in this country, although the whole of the carriage was done abroad. . . . Again, it appears to me that if a railway company had a station at Dover and a station at Calais, and a foreign company established at Calais, and it carried passengers from Dover to Calais as a regular thing, that that would be a trading in Dover as far as regards the passengers carried from Dover to Calais."

Profits were defined as "take what money they receive and deduct from that what it costs them to send the messages."

BRETT, L.J., ruled that it was immaterial that the foreigners' duties in connexion with the contract were wholly executed abroad.

Foreign Dividends.—The shareholders in a foreign bank had the option of requiring payment of dividends either at the London agency of the bank or abroad. The agency profits were sufficient to pay dividends claimed in London, so that no remittances were made from abroad. It was held that the agency was entrusted with payment within sec. 10 of the Income Tax Act, 1853, which provides that any person entrusted with payment of any "interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, or shares of any foreign or Colonial Company . . . or in respect of any securities given by or on account of any such Company" is required to deliver to the Special Commissioners, accounts of amounts payable, and to pay tax thereon. *Gilbertson* v. *Fergusson* (1881), C. A. (*p*). It was decided, however, that in the assessment of the dividends on the agency, an allowance should be made in respect of that portion which arises from the previously taxed profits of the English agency. The bank (Imperial Ottoman Bank) would be taxable on its profits made in England.

BRETT, L.J., said—

> "Therefore if part of the dividends in respect of which the income tax is payable is also in respect of profits earned from a business in England, the tax on that part would have to be paid twice over, which ought not to be; and as to that, there should be a deduction. In respect, however, of so much of the dividends payable in England as is derived from profits from business carried on in Turkey, it is not paid twice over, and consequently as to that there ought not to be any deduction at all. That being so, it seems to me that the order of the Divisional Court is in substance correct. That order points out the true principle, which is, that in respect of so much of the dividend as is payable out of the profits from the business carried on in England, the income tax is to be paid, not twice, but only once, but that the income tax is also to be paid in respect of so much of the dividend which is paid in England from the profits of business carried on in Turkey."

Shipping Company.—A foreign shipping Company with registered office at Christiania, where the books were kept and meetings held, owned a ship, and the chartering and all voyage

(*p*) 7 Q. B. D. 562; 46 L. T. 10; 1 Tax Cas. 501.

receipts and disbursements were dealt with by a Glasgow firm, who received and retained all funds until required for payment of expenses and dividends. It was held that the Company were not resident in the United Kingdom, but carried on a trade here, and that the profits derived therefrom were assessable on the Glasgow firm as agents. *Jas. Wingate & Company* v. *Webber*, [1897] (*q*).

Issue of Loans.—The Yokohama Specie Bank, Ltd., was assessed as agents of the Industrial Bank of Japan. The latter was established in Japan, was privileged in connexion with financial matters relating to the Japanese Government, and was authorized by Japanese authorities to issue loans in Europe and the United States. The Industrial Bank made arrangements with the Yokohama Specie Bank, Parr's Bank, and the Hong Kong and Shanghai Banking Corporation to issue prospectuses and collect subscriptions. The Yokohama Bank collected the receipts from the other banks, and remitted to the Industrial Bank less commission to all the banks. It was held that the Industrial Bank did not carry on business here, that the work of issuing loans was done by the three banks in England, and that the only assessability was on the commission payable to the latter. *Yokohama Specie Bank, Ltd.* v. *Williams* (1915) (*r*).

Wine Merchant.—An English firm was appointed by a French wine merchant as his sole representative in England for the sale of champagne. Orders were obtained by the English agents and transmitted to the French merchant, who used his discretion as to acceptance of orders. Delivery was given direct from France to the purchaser at the expense and risk of the latter, and payments were usually made direct to the French merchant, although occasionally through the agents. Receipts were sent direct from France to the customer. Payment of the English agents was in the form of commission. It was held that the French merchant did not carry on a trade within the United Kingdom, and

(*q*) 34 Sc. L. R. 699; 3 Tax Cas. 569. (*r*) 139 L. T. 860.

therefore was not assessable. *Grainger & Son* v. *Gough*, [1896] H. L. (*r*).

LORD HERSCHELL held that no contracts were made by the agents, who had no authority to accept orders, and that the deliveries were made in France.

> "I think there is a broad distinction between trading *with* a country, and carrying on a trade *within* a country. Many merchants and manufacturers export their goods to all parts of the world, yet I do not suppose any one would dream of saying that they exercise or carry on their trade in every country in which their goods find customers. When it is said, then, that in the present case England is the basis of the business, that the wine was to be consumed here, and that the business done would remain undone but for the existence of the customers in England, I cannot accept this as proof that M. Roederer carries on his trade in this country. . . . I cannot adopt the view that the words, 'having the receipt of any profits or gains,' control the word 'receiver' only, and not the words 'factor' and 'agent.' The word 'agent' obviously cannot extend to every agent for whatever purpose he may be employed, as, for example, to an advertising agent. . . . I think any agent who received for the foreigner exercising such trade moneys which included trade profit, would be within the provisions of sec. 41."

LORD WATSON stated that there was a very broad distinction between the case of a foreigner making contracts in England, either personally or through an agent, and the case of his making similar contracts in his own country. His Lordship also agreed that purchasing stock in this country with a view to trading in it elsewhere was not carrying on a trade in the United Kingdom. See sec. 31 of the Finance (No. 2) Act, 1915, *ante*.

A French firm consigned wines sometimes direct to its customers here and sometimes to its *del credere* agent here. The firm had an office here and one of the partners visited this country, being here about four months in the year. Payment in all cases was made to the agents. It was held that the firm was assessable on the profits from the sales in

(*r*) A. C. 325; 65 L. J. Q. B. 410; 74 L. T. 435; 60 J. P. 692; 44 W. R. 561; 3 Tax Cas. 462.

this country and that the principal may be assessed when he can be served with the proper notices. *Tischler* v. *Apthorpe* (1885) (*s*).

A French firm had an agent here who received orders and payments. Delivery was given from the stock in England unless the order was large, when the wine was shipped direct from France to the customer. The firm had a banking account in London. It was held that the profits from sales here were taxable. *Pommery & Greno* v. *Apthorpe* (1886) (*t*).

A French firm appointed an English firm as sole agents in England for sale of champagne. The agents secured orders and were paid by commission. The wine was despatched from France direct to the customers, and payments were made either through the agents or direct to the firm. It was held that the firm was liable to assessment on the profits from the trading carried on here. *Werle & Company* v. *Colquhoun* (1888), C. A. (*u*).

The Master of the Rolls ruled that the question of whether money is paid in England or not is a strong circumstance but not necessary to the fact that a trade is carried on in England.

Provisions.—A foreign firm consigned goods to an English firm for sale on commission, and the English firm accepted responsibility for payment by the purchasers and sold the goods in their own name and received the proceeds. The English firm rendered statements to the foreign firm, crediting full receipts and debiting charges and commission. The debit or credit balance was paid or remitted as the case may be. It was held that the profits of the English sales were assessable through the English firm as agents. *Watson* v. *Sandie & Hull*, [1898] (*x*).

(*s*) 52 L. T. 814; 49 J. P. 372; 33 W. R. 548; 2 Tax Cas. 89.
(*t*) 56 L. J. Q. B. 155; 56 L. T. 24; 35 W. R. 307; 2 Tax Cas. 182.
(*u*) 20 Q. B. D. 753; 57 L. J. Q. B. 323; 58 L. T. 756; 52 J. P. 644; 36 W. R. 613; 2 Tax Cas. 402.
(*x*) 1 Q. B. 326; 67 L. J. Q. B. 319; 77 L. T. 528; 46 W. R. 202; 14 T. L. R. 124; 3 Tax Cas. 611.

Insurance Company.—(See Insurance Companies, p. 242.)

Delivery. A foreign Company had an agent in England, and the agent only accepted an order after sending it to the Company and receiving specific authority. The goods were consigned to Liverpool in the name of the agent. It was held that the profits made here were assessable and that the contracts and deliveries were made here. *Turner* v. *Rickman*, [1898] (*y*).

WILLS, J., held that the contracts were made in this country, and that if the delivery were also to take place here, then it was clear that the American Company were carrying on a trade in this country

> "The delivery was made in this country, and, in my judgment, even if the contract had been made in New York, an executory contract for sale, a man cannot get his money and can make nothing of it unless he delivers the goods in this country; when he does deliver the goods in this country he exercises a trade and carries on a business.

BRUCE, J., stated that—

> "Had the contract been to deliver on board ship at Boston, there would have been a good delivery to the customer of what the customer bought; but so far as the facts are set out in this case, there is no delivery to the customer until after the goods arrive in this country."

Diamond Mines.—A company registered in South Africa, worked diamond mines there, where its head office was situated and its general meetings of shareholders held. Meetings of directors were held both in London and in South Africa, but the London meetings exercised the real control, and the majority of Directors and Life Governors resided in the United Kingdom. It was held that the company was, for income tax purposes, resident in the United Kingdom, and was assessable under Case 1 on the whole of its profits. *De Beers Consolidated Mines, Ltd.* v. *Howe*, [1906] H. L. (*z*).

(*y*) 4 Tax Cas. 25.
(*z*) A. C. 455; 75 L. J. K. B. 858; 95 L. T. 221; 22 T. L. R. 756; 13 Mans. 394; 5 Tax Cas. 198.

The above case was followed in *New Zealand Shipping Co., Ltd.* v. *Stephens*, [1907] C. A. (*a*). The Company was registered and had the registered offices in New Zealand where business was transacted by the Local Board. Important questions were dealt with by a separate Board in London where the accounts were prepared and dividends declared.

This company has subsequently transferred the control to South Africa. (See also "Alteration of Articles," p. 213.)

The Lord Chancellor disagreed with the contention that a company only resides where it is registered, and held that the true rule was that a company resides for income tax purposes where its real business is carried on. "A company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business. An individual may be of foreign nationality and yet reside in the United Kingdom. So may a company."

His Lordship ruled that the Commissioners' findings of fact could not be impugned. The findings were—

(1) That the trade or business of the appellant company constituted one trade or business, and was carried on, and exercised by, the appellant company within the United Kingdom, at their London office.

(2) That the head and seat and directing power of the affairs of the appellant company were at the office in London, from whence the chief operations of the company, both in the United Kingdom and elsewhere, were, in fact, controlled, managed, and directed.

Residence on Yacht.—An American citizen lived on board his yacht, which was moored in the River Colne within the port of Colchester. Although the yacht was kept ready for sea, it had not left its anchorage for about twenty years. It was held that the appellant was liable as a person residing in the United Kingdom. *Bayard Brown* v. *Burt*, [1911] (*b*).

(*a*) 24 T. L. R. 172; 52 S. J. 113; 5 Tax Cas. 553.
(*b*) 81 L. J. K. B. 17; 105 L. T. 420; 27 T. L. R. 363; 5 Tax Cas. 667.

Madras Merchant with House in United Kingdom.—A merchant trading in Madras resided there with his wife during the whole of the year of assessment, not having visited the United Kingdom. Although his usual residence was in Madras, he had, in nearly every year prior to the year of assessment, visited the United Kingdom. During the year of assessment some of his children resided in the United Kingdom at a house purchased in the name of the merchant's wife out of moneys belonging to her and to him. It was held that he was not chargeable during the year of assessment as a person residing in the United Kingdom. *Turnbull* v. *Inland Revenue*, [1904] (*c*).

Yarn.—An English firm carried on the business of merchants and commission agents in the United Kingdom, and sold goods for a firm of manufacturers in Belgium. Orders were submitted to the manufacturers for authority to accept on behalf of the manufacturers. No written agency agreement existed, and the goods were consigned to the appellants, who received payment and issued receipts, and who rendered sale accounts to the manufacturers and were paid by commission, being also liable for half of the bad debts. It was held that the manufacturers were carrying on a trade in the United Kingdom, and that the agents were rightly assessed as such. *Macpherson & Co.* v. *Moore*, (1912) (*d*).

Foreign Companies working Foreign Mines.—An assessment was made on the agents in the United Kingdom, of a French company which owned and worked phosphate mines in Algeria. The agents were paid by commission, and had authority to sell, without reference to the company, at or over fixed minimum prices. Payments were made in London, cheques being sometimes drawn in favour of the company and sometimes of the agents, but the cheques were always sent to France, and in no case were they paid into a bank in the United Kingdom. No stock was kept by the agents, and the

(*c*) 42 Sc. L. R. 15, 7 F. 1; 12 Scots Law Times, 367; 6 Tax Cas. 206.
(*d*) S. C. 1315; 49 Sc. L. R. 979; 6 Tax Cas. 107.

Bills of Lading were endorsed as soon as received by the agents (while the phosphate was still at sea) and passed on to the purchasers with invoices and insurance policies, in exchange for an instalment of three-fourths of the price.

It was held (LORD DUNDAS dissenting) that the company did not exercise a trade in the United Kingdom, and (unanimously) that the agents were not "agents" within sec. 41 of the 1842 Act (*ante*). *Crookston Bros.* v. *Furtado* (1911) (*e*). See sec. 31 of the Finance (No. 2) Act, 1915 (*ante*).

Mariners.—A master mariner was abroad for the greater part of the year, his ship running between Glasgow and foreign ports. He had a house at Glasgow where his wife and family resided, and he was held liable to assessment on his salary. *In re Young* (1875) (*f*). The fact of a master mariner being absent from the United Kingdom during the whole of the year of assessment does not alter the assessability. *Rogers* v. *Inland Revenue* (1879) (*g*).

Foreigner renting House in United Kingdom.—An American, who had no place of business in the United Kingdom and was ordinarily resident in New York, rented a house and shooting in Scotland, where he stayed for about two consecutive months in each year. The owner of the house maintained the establishment, and the keeper had the entire management of the shootings. It was held that the Appellant resided in the United Kingdom for Income Tax purposes, and was therefore assessable under Cases 4 and 5 (p. 203). *Cooper* v. *Cadwalader*, [1904] (*h*).

The LORD PRESIDENT said—

> "His occupation of the subjects is not of a casual or temporary character, but is substantial, and as regards some of its incidents is continuous. . . . Domicile has no bearing on the question, and where a person has in fact a residence in the United Kingdom he is chargeable as a person residing there,

(*e*) S. C. 217; 48 Sc. L. R. 134; 5 Tax Cas. 602.
(*f*) 12 Sc. L. R. 602; 2 R. 925; 1 Tax Cas. 57.
(*g*) 6 R. (Ct. of Sess.) 1109; 16 Sc. L. R. 682; 1 Tax Cas. 225.
(*h*) 46 Sc. L. R. 117; 12 Sc. L. T. R. 449; 7 F. 146; 5 Tax Cas. 101.

although he may also have a residence, or residences, out of the United Kingdom."

His Lordship ruled that the case did not fall within sec. 39 of the 1842 Act (p. 199), as the appellant could not reasonably maintain that he was in the United Kingdom "for some temporary purpose only, and not with any view or intent of establishing his residence therein," as he took the house with the intention of establishing his residence there during a material part of each year and of maintaining his connexion with it for years, and, moreover, the residence was always ready for him. It is not necessary in order to a person being chargeable that he shall have his *sole* residence in the United Kingdom.

A merchant trading in Italy, where he was ordinarily resident, had a residence in England at which he resided with his family for several months in the year. It was held that he was a resident of the United Kingdom and liable to assessment on the whole of the profits of the business. *Lloyd* v. *Sulley* (1884) (*i*).

The LORD PRESIDENT held that the appellant resided in the United Kingdom, and that a man could have two or more residences in the sense of the Income Tax law.

(See p. 336 as to ABATEMENTS AND EXEMPTIONS.)

Finding of Fact.

(See also p. 325.)

An important point was raised in *American Thread Company* v. *Joyce*, [1913] H. L. (*k*), where an American company, which did not trade in the United Kingdom, was promoted by an English company which owned, directly or through trustees, the whole of the American company's common stock. The Commissioners found that the control of the management of the company rested with and was constantly exercised by the directors resident in England in extraordinary session, and it was held that this finding could only be impugned on the

(*i*) 21 Sc. L. R. 482; 11 R. 687; 2 Tax Cas. 37.
(*k*) 108 L. T. 353; 57 Sol. Jo. 321; 29 T. L. R. 266; 6 Tax Cas. 1, 163.

ground that there was not evidence to justify the Commissioners in arriving at that conclusion, and that therefore the company must be assessed under Case 1.

FOREIGN TAX.

A deduction is allowed in respect of a foreign or colonial Income Tax paid by a company trading abroad.

In *Stevens* v. *The Durban-Roodeport Gold Mining Co., Ltd.*, [1909] (*l*), an English company carrying on gold mining in the Transvaal, paid a tax in the Transvaal of 10 per cent. on the net produce of the mines, and deduction thereof was allowed from the profits of the year to which the tax related, before taking the average.

(See as to foreign Income Tax on securities, stocks, shares, and rents, assessable under sec. 5 of the Finance Act, 1914, p. 201.)

FRIENDLY SOCIETIES, ETC.

Certain exemptions from Income Tax are allowed to Friendly Societies, Trade Unions, and Industrial and Provident Societies.

Friendly Societies.—Rule 1 to Schedule C, sec. 88 of the 1842 Act, as amended by sec. 70 of the Finance (1909-10) Act, 1910, exempts—

> The stock, dividends, or interest of any friendly society legally established under any Act of Parliament relating to friendly societies; provided it shall appear by the rules of any such society deposited or to be deposited with the Commissioners for the reduction of the National Debt, or with the trustees of any savings bank, that the sums assured by any such society to any individual, or to any person nominated by or to claim under him shall not exceed the sum of three hundred pounds, or the amount of any annuity or annuities granted or to be granted by any such society to any individual, or to any person nominated by or to claim under him, shall not exceed the sum of fifty-two pounds per annum:
>
> Provided also, that when any property belonging to any

(*l*) 100 L. T. 481; 25 T. L. R. 316; 5 Tax Cas. 402.

such society shall be invested in the public securities in the Bank of England, the said last-mentioned property shall be duly claimed and proved by any trustee or treasurer of any such society, or by any member thereof, before the said Commissioners for special purposes.

Schedules D and A.—The exemption under Schedule C is, by sec. 49 of the 1853 Act, extended to all interest and other profits and gains chargeable under Schedule D, and to Schedule A by sec. 12 of the Revenue Act, 1889.

Savings Banks.—The exemption given above is, by sec. 21 of the Finance Act, 1915, extended to all income of the savings bank which is applied in the payment or credit of interest to any depositor, provided that where the interest paid or credited to any depositor exceeds £5 in the year the bank and any branch thereof must make a return to the local surveyor of the name and place of residence of every such depositor with the amount of the interest, and the making of the said return is a condition precedent to allowance of the exemption.

Expenses of management may be claimed as with companies whose business consists mainly in making investments (see p. 243).

Trade Unions.—The exemptions applicable as above to Friendly Societies are granted to registered trade unions by the Trade Union (Provident Funds) Act, 1893.

Industrial and Provident Societies.—The exemptions extended to Industrial and Provident Societies (which cover Co-operative Societies) do not extend to Schedule A, being restricted to Schedules C and D, and the latter exemption only applies if—

(1) The society does not sell to non-members; and—

(2) The number of shares is not limited either by the rules or practice.

The exemption also covers mortgage interest received. (See "Interest," p. 262, for interest paid.)

Registered Friendly Societies may exclude from assessment, interest paid to the society by exempt mortgagors, but

the society must allow any mortgagor who has not been exempted (p. 332) to deduct tax in the ordinary manner, and the society can then claim repayment.

(See CO-OPERATIVE STORES, p. 155.)

Unregistered Friendly Societies.—It is provided by sec. 8 of the Finance Act, 1904, that unregistered Friendly Societies are entitled to exemption where the total income does not exceed £130 (see p. 332).

In practice this provision is interpreted as—

(*a*) Being confined strictly to "Unregistered Friendly Societies" of which the definition is to be gathered from the Friendly Societies Acts.

(*b*) Giving a title to exemption only, and not to abatement; and

(*c*) Giving a claim to repayment (where exemption has previously not been allowed) for a period of three years.

The Friendly Societies Act, 1896, permits registration of the following classes of societies, subject to the society consisting of at least 7 members:—

(1) Friendly Societies for relief in sickness, old age, etc.

(2) Cattle Insurance Societies.

(3) Societies for any benevolent or charitable purpose.

(4) Working-men's clubs.

(5) Societies specially authorized by the Treasury.

The exemption is in respect of any *friendly society* registered under the Friendly Societies Acts. The latter allow registration, as above, of friendly societies and other societies, so that the exemption does not apply to a society other than a friendly society even though it may be registered under the said Acts, thus, *e.g.*, money societies which may be registered under class 5 above are not within the exemption.

Money Societies.—Money Societies registered under the Friendly Societies Act, 1896, are not entitled to exemption from Income Tax, but assessment may be restricted to the profits or interest paid to persons who are not exempt.

Building Societies.—Registered Friendly Societies, and

Industrial and Provident Societies, when acting as Building Societies, may be assessed under either of the arrangements A and B applicable to Building Societies. (See p. 125.)

FURNISHED HOUSES.

Assessments are made on the profits arising from the letting of furnished houses, and the following deductions are allowed :—

(*a*) The amount of the net Schedule A assessment.

(*b*) Tenant's rates and taxes and Inhabited House Duty, when these are borne by the lessor.

(*c*) Wear and tear of furniture.

(*d*) Wages of servants provided by lessor.

(*e*) Caretaker's expenses involved in maintaining the house when unoccupied.

(*f*) Charges of house agents for obtaining tenant.

Rent.—A deduction is not admissible in respect of the rent paid by a lessor of a furnished house for a house in which to live while the former house is let. *Wylie* v. *Eccott*, [1913] (*m*).

Assuming that a furnished house is let for the whole year at £200 per annum, and the lessor pays £30 rates and taxes, £2 House Duty, and £60 wages, and that the net Schedule A assessment is £45, and the wear and tear of furniture is estimated at £20,—the assessment would be as follows :—

	£	£
Gross rent received		200
Less Net Schedule A	45	
„ Rates and taxes	30	
„ House Duty	2	
„ Wages	60	
„ Wear and tear	20	
	—	157
Assessment =		£43

(*m*) S. C. 16; 50 Sc. L. R. 26; 6 Tax Cas. 128.

Gas Works.

Gas works are assessable under No. III. of Schedule A on the profits of the preceding year.

(See "Depreciation," p. 182, for special scheme of Depreciation allowances, and p. 55 for treatment of No. III. of Schedule A.)

Foreign Gas Works.—Foreign Gas Works are assessed under Schedule D, as No. III. of Schedule A only applies to the United Kingdom. *Imperial Continental Gas Association* v. *Nicholson* (1877) (*n*).

Municipal Gas Works.—A corporation carrying on a gas works is liable to assessment on the profits made. *Inland Revenue* v. *Glasgow Corporation Gas Commissioners* (1876) (*o*).

The Lord President said—

> "It seems to me that the Corporation of the City of Glasgow is . . . empowered to enter into a speculation as traders in gas. No doubt it may have been for the benefit of the community—that is perfectly true—but they have all the character and attributes of a trading company. They acquired the works for the purpose of manufacturing gas; they manufactured gas, and sold it to those who were willing to become buyers; but they can't sell it to anybody, that is to say, they cannot compel anybody to take it who is not willing to do so, and willing to do so at their price."

His Lordship distinguished the case from *Glasgow Corporation Water Commissioners* v. *Inland Revenue* (see p. 282).

Restoration of Plant.—In *Clayton* v. *Newcastle-under-Lyme Corporation* (1888) (*p*), gas works were acquired in a defective structural condition, and it was held that a deduction could not be made in respect of sums set aside annually to be expended in future years on restoring plant and apparatus.

Lighting of Streets.—In *Dillon* v. *Corporation of Haverfordwest*, [1891] (*q*), the Corporation owned gasworks and

(*n*) 37 L. T. 717; 1 Tax Cas. 138.
(*o*) 3 R. 857; 13 Sc. L. R. 566; 1 Tax Cas. 122.
(*p*) 2 Tax Cas. 416.
(*q*) 1 Q. B. 575; 60 L. J. Q. B. 477; 64 L. T. 202; 55 J. P. 392; 39 W. R. 478; 3 Tax Cas. 31.

supplied gas for public lamps free of cost, but charged private customers. It was decided that the expense of lighting the public lamps could not be deducted from the profit derived from supplying private customers.

POLLOCK, B., said that the Corporation were, as regards the public lamps, in no sense traders. "There are no vendors and there are no vendees."

CHARLES, J., stated that—

> "Now people cannot trade with themselves, and therefore I do not see in any sense how this Corporation can be held to carry on a trade, so far as their duty of lighting the public streets is concerned. They begin to be tradespeople as soon as they have got customers, and their customers are those who choose to contract with them to take their gas. . . . I think the expenditure in question is not an expenditure for the purposes of the trade in question, which I think was a trade of supplying the private customers only, but for the purpose of enabling the Corporation to enter upon that trade, which is a very different matter."

Dividends. A gas company is prevented by its special Act from paying dividends exceeding a fixed rate, and in *Ashton Gas Company* v. *A.-G.*, [1906] H. L. (*r*) the company claimed to deduct the Income Tax from its gross profits before paying dividends and then to pay the dividend in full. It was held that this was illegal and that, in determining the rate of dividend, the profits should be calculated as inclusive of income tax payable.

GIFTS.

Gifts are not assessable, thus if a man makes a voluntary allowance to his son, the latter is not taxable thereon.

In the case of, *e.g.*, a college which has gifts, the latter should be excluded from the receipts.

(See Chapter III., p. 45, and Schedule E, "CLERGYMEN," p. 349.)

(*r*) A. C. 10; 75 L. J. Ch. 1; 93 L. T. 676; 70 J. P. 49; 22 T. L. R. 82; 13 Mans. 35.

Goodwill.

A deduction cannot be made in respect of the writing-down of goodwill.

Graves.

(See Cemeteries, p. 146.)

Harbour Dues.

In *Sowrey* v. *King's Lynn Harbour Moorings Commissioners* (1887) (*s*) the Commissioners were empowered to levy dues for the use of the Corporation on all ships navigating the cuts in the Norfolk Estuary, and the dues were to be applied in repaying borrowed money and interest thereon, and the dues were to cease when the repayment was completed. It was held that the dues were assessable after deducting disbursements exclusive of interest and repayment of debts.

(See p. 288.)

Hire Purchase.

Payments are extensively made by, *e.g.* Colliery Companies, to railway-wagon builders for wagons on the hire-purchase system, *i.e.* wagons are purchased by instalments spread over a number of years and the aggregate of these instalments obviously exceeds the *cash* price, covering as it does, interest on unpaid instalments.

The practice was to refuse any allowance in respect of these instalments until it was decided in *Darngavil Coal Company* v. *Francis*, [1913] (*t*), that the portion of the payment attributable to hire should be admitted as a deduction.

Arrangements have now been made for treating wagons acquired under the system of hire-purchase, in accordance with the following scheme:—

Railway Wagons. Scheme for determining the income tax allowances to be granted in respect of payments made in acquiring wagons under hire-purchase agreements.

(*s*) 3 T. L. R. 516; 2 Tax Cas. 201.
(*t*) S. C. 602; 50 Sc. L. R. 427.

1. The lessee of wagons under a hire-purchase agreement shall furnish to the Surveyor of Taxes a copy of the agreement together with a certificate from the wagon builder, or other satisfactory evidence as to the price at which the wagons would have been sold for cash at the date of the agreement, hereinafter referred to as the initial value.

2. The difference between the initial value and the aggregate amount payable under the agreement shall be treated as "hire" and allowed in equal annual amounts spread over the term of the agreement.

3. Depreciation shall also be allowed on the initial value from the beginning of the agreement in accordance with the provisions of the Income Tax Acts at a rate to be settled by agreement between the lessee and the Crown or by appeal to the Income Tax Commissioners.

4. In the event of any wagons under a hire-purchase agreement being purchased outright before the termination of the agreement or being returned to the lessor, the allowance for hire shall cease from the date of such purchase or return, and if returned the allowance for depreciation shall thenceforth cease.

5. If any such wagons shall be "refinanced" the allowance for hire under the agreement thus terminated shall cease and a fresh allowance shall be made for the period of the new agreement, to be determined by taking the difference between the amount at which such wagons are refinanced at the date of the new agreement and the aggregate amount payable under the new agreement, and spreading the said difference evenly over the term thereof. The allowance for depreciation to be continued without reference to the new agreement.

6. Where any wagons are the subject of hire-purchase agreements current at the date of this scheme or during any of the preceding years upon the average profits of which any income tax assessments are computed, and no allowances for hire have been made in respect of the payments under such agreements, the amount which would have been allowable annually for hire had this agreement been in force at the date of the hire-purchase agreement shall be ascertained and the appropriate amount shall be allowed annually for the remainder of the term of the hire-purchase agreement. Provided that, where the depreciation allowance in respect of such wagons has been calculated on the aggregate amount payable under the agreement, the total of the amounts allowable as hire under this clause shall be deducted from the said aggregate amount in computing future allowances for depreciation.

Should satisfactory evidence of the initial value of the wagons at the date of the agreement not be available, such value may be computed from the aggregate amount payable under the agreement on the basis of a five per cent. interest table.

7. Where any wagons are the subject of hire-purchase agreements current at the date of this agreement, and allowances have been made in any previous year in respect of the payments under such agreement otherwise than in the form of depreciation, the aggregate amount of such allowances shall be deducted from the aggregate amount allowable under this scheme as "hire" in respect of such agreement, and the balance only shall be allowed in equal annual amounts spread over the remainder of the term of the agreement. Provided that any adjustment of the capital value on which depreciation is allowable rendered necessary by the operation of this clause, shall be made as provided in Clause 6.

GENERAL.

8. The cost of reconstruction and all renewals of parts shall be allowed as repairs, except so far as they constitute an extension, enlargement, or other similar improvement of value.

9. Where such reconstruction and renewals are allowable under this scheme, they shall be allowed notwithstanding that the cost thereof may not have been debited in the company's accounts against Revenue.

10. Where "dead-ends" are converted into "spring buffers," the total cost of such conversion shall be allowed less £5 per wagon, which latter sum shall be treated as the capital value of the improvement, such sum to be added to the value of the wagons for the purpose of computing the annual allowance for depreciation.

11. This scheme shall take effect for 1913–14 and for years preceding where appeals are now awaiting settlement, and in calculating the assessable liability shall be applied to each of the five years or other period on the average of which the said liability falls to be computed.

12. The rate of depreciation when agreed upon shall apply to all wagons whether the subject of hire-purchase agreements or not.

(We) desire to adopt the above arrangements and hereby undertake to fulfil the conditions thereof.

Dated Signature.

The above scheme is applicable to 1913–14 and all previous years where the matter is under appeal.

In paragraph 5 the expression "amounts at which such wagons are refinanced" means the sum for which the wagons are sold by the lessee or owner to a financing company for the purpose of being reacquired under a "hire-purchase" agreement.

The principle of the above scheme would of course be applicable to other goods acquired by a trader under hire-purchase agreements, and if the benefit of the scheme is specifically refused by the Revenue, the ruling of *Darngavil Coal Company* v. *Francis* (*ante*) is binding on allowance of comparable matters.

The above law and practice deal with the purchaser under hire-purchase agreements and, in effect, allow deduction of any excess over *cash* price. The question also arises in the case of the seller, and there is an extensive business in connexion with the sale of many articles such as sets of books on the instalment system, payments being spread over *e.g.* 5 years. From an accountancy point of view it is incorrect practice to credit the full amount of the purchase money when the sale takes place, and thus bringing into the Profit and Loss Account such amount as part of the sales of the year. It is obvious that before the purchase price is wholly paid, further expenses will be incurred in connexion with the instalments.

For Income Tax purposes, an estimate of the amounts falling due in future years could be deducted from sales, and, in the following year, the estimate should be written back and the new estimate deducted. The authority for such a course may be found in *Sun Insurance Office* v. *Clark*, [1912] H. L. (*u*), where it was decided that, in the case of a Fire Insurance business, an estimated reserve of 40 per cent. of the yearly premium income may be carried forward, representing estimated losses on unexpired risks (see p. 251), while in *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] (p. 104), the point was emphasized that Income Tax profits must be ascertained on commercial principles.

A hire-purchase contract is a sale to the purchaser, with the purchase money on loan from the seller at interest, and as that portion of the aggregate instalments representing

(*u*) A. C. 443; 81 L. J. K. B. 488; 106 L. T. 438; 28 T. L. R. 303; 56 S. J. 375; 6 Tax Cas. 59.

interest may not be received owing to return of the articles acquired, it is clear that crediting full sales would be a commercially insupportable method of accounting. The following system is consistent with law and equity :—

	£
Cost price	60
Cash „	72
Sale „	90

The hire-purchase contract is assumed to spread over three years in half-yearly instalments of £15, and each of these instalments is, in reality, composed as follows :—

	£
Cost of manufacture . . .	10
Interest on outstanding money .	3
Profit	2
	£15

A system (consistent with equity) admitted in practice is to debit £20 against cost and credit £30 in each year.

HOARDINGS.

Advertisement hoardings are assessable under Case 6 of Schedule D (p. 63), and it should be noted that they should be excluded from the Schedule A assessment.

HOP GROUNDS.

Hop grounds are chargeable under Schedule B (see p. 39).

IMPLEMENTS.

A deduction is allowed for supply or repair or alteration of implements of trade. Rule 3 to Case 1, Schedule D (p. 81).

INCOME TAX.

Income Tax paid does not form a deductible allowance (see also *Ashton Gas Company* v. *A.-G.* at p. 236.)

IMPROVEMENTS.

A deduction is not admissible in respect of improvements of premises, such expense being an addition to capital.

Rule 3 to Case 1, Schedule D (p. 81).

INFANT.

(See MINOR, p. 275.)

INDUSTRIAL AND PROVIDENT SOCIETIES.

(See FRIENDLY SOCIETIES, p. 231.)

INSURANCE.

Insurance against, *e.g.*, any possible loss of trading connexion is allowable under *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] H. L. (*a*), where Licence Insurance Premiums were held to be deductible. The premiums were paid to provide against the loss of the trade incidental to the tied houses, occasioned by the taking away of a licence owing, *e.g.*, to default of the tenant, and this covers the comparative case of a company paying insurance premiums on the life of an employee who personally influences the business, and whose death would result in a diminution of business. Profits insurance premiums are within the same category, as they are paid to insure against stoppage of profits, while licence insurance premiums provide against stoppage of the profits from a tied house. Licence insurance premiums are, therefore, "profits insurance premiums."

INSURANCE COMPANIES.

The assessment of Insurance Companies presents some peculiarities in that there are alternate bases of assessment.

Life companies are subject to periodical valuations, and in the case of a company having a quinquennial valuation, the assessable profits equal (subject to the alternate method, *post*) one-fifth of the whole surplus including all bonuses available for distribution, as by the last actuarial valuation. When the

(*a*) A. C. 433; 84 L. J. K. B. 417; 59 S. J. 144; 112 L. T. 651; 31 T. L. R. 104; 6 Tax Cas. 399.

periodical valuation is taken more frequently than quinquennially the profits are calculated accordingly, on the reduced average.

Alternate Methods. The assessment is only based on the *profits* under Case 1 of Schedule D if they are larger than *interest and dividends* received. If they are less in amount, the interest and dividends form the alternative method of assesement, and any interest received untaxed, *i.e.* which has not been subject to deduction of tax at the source (see p. 389) is assessable on the company direct under Case 3 of Schedule D. The income of an Insurance Company is largely derived from interest and dividends, and, in the case of Life companies, they are compelled by law to maintain very extensive investments.

Management Expenses.—When assessment is made by the taxed income there is a non-allowance of that part of the expenses of management covered by the difference between such taxed income and the *actual* profits, but sec. 14 of the Finance Act, 1915, provides that, in the case of a company carrying on life insurance business, or a company whose business consists *mainly in the making of investments*, and the principal part of the profits is derived therefrom, a claim may be made to the Special Commissioners for repayment of tax on management expenses (including commissions), but it is provided that the following factors must be observed if a claim is allowed :—

(1) The relief shall not make the tax paid by the company less than the tax which would have been paid if the *profits* had been charged under Case 1 (p. 46).

(2) Fines, fees, or profits arising from reversions in the case of insurance companies, and any uncharged profits of any other company, must be deducted from the amount of the management expenses.

(3) In determining profits from reversions a set-off may be made of any loss arising from reversions for any year from 1915—1916 onwards.

The claim for management expenses must be made to the Surveyor within twelve months after the end of the year of assessment, and the matter may be dealt with before the Special Commissioners in the same manner as an ordinary appeal, while a case may also be required under sec. 59 of the 1880 Act (p. 329). The claim must not include expenses admissible under Schedule A in respect of maintenance, repairs, insurance, or management of land or houses (p. 27).

Foreign Companies. -In the case of foreign companies carrying on life insurance business in the United Kingdom through a branch or agency here, and not having the head office in the United Kingdom, the income from the investment of the life insurance fund (excluding the annuity fund, if any) is chargeable under Case 3 of Schedule D (p. 63) to the extent of that portion of the income which "bears the same proportion to the total income from those investments as the amount of the premiums received in that year from policy holders resident in the United Kingdom and from policy holders resident abroad whose proposals were made to the company at or through its office or agency in the United Kingdom bears to the total amount of the premiums received by the company." When the company has its head office in a British Possession the Board of Inland Revenue may, by Regulations, substitute another basis. The relief for management expenses is to apply in the same proportion as the assessment.

The Special Commissioners have the sole jurisdiction for assessment of the above companies.

When the company has been charged by deduction of tax from investments in a sum equal to the charge as ascertained above no further assessment is to be made, and when the taxed income is less than the charge the latter is to be reduced by the amount of the taxed income.

Foreign Investments.—Sec. 16 of the Finance Act, 1915, provides that sec. 5 of the 1914 Act (p. 201), which taxes *income* from foreign and colonial securities, &c., shall not apply to such income of an insurance company arising from

investment of the foreign life insurance fund. A corresponding reduction in allowance for management expenses must, however, be made.

"Foreign Life Assurance Fund" is defined in the Act as meaning any fund representing the amount of the liability of a company in respect of its life business with policy holders and annuitants residing out of the United Kingdom whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the United Kingdom, and, where such a fund is not kept separately from the life assurance fund, means such part of the life fund as represents the liability of the company under such policies and annuity contracts; such liability being estimated in the same manner as for the periodical returns to the Board of Trade under the Assurance Companies Act, 1909.

"Assurance Company" means any persons or bodies of persons, corporate or unincorporate, to which the Assurance Companies Act, 1909, applies, and the term "life assurance business" covers the granting of annuities.

(See p. 195 as to alternate methods.)

In *Revell* v. *The Edinburgh Life Assurance Company* (1906) (*x*), the taxed income of the company exceeded the net profits and, in addition, the company received £1123 interest which had not been subject to deduction. The latter interest was held to be assessable under Case 3 and Case 4, the former covering "short term" interests and the latter the interests from foreign securities.

The company claimed under sec. 23 of the 1890 Act (see p. 359), that, after eliminating taxed income, a loss was made, but the Commissioners refused the claim as the company's income which had been taxed at the source, formed part of its trade profits, and held that the alleged loss was actually a profit of £66,976 as shown by the following abstract:—

(*x*) 5 Tax Cas. 221.

EXPENDITURE.	£	REVENUE.	£	£
Expenses, including claims, etc.	412,815	Receipts other than interest, etc.		331,534
Intermediate bonus	86	Interest — Cross entries	1,706	
Increase in liability	3,924	Foreign interest not remitted	24,280	
Balance	66,976	Untaxed interest	1,123	
		Taxed interest already taken credit for in arriving at liability *re* annuities	16,354	
		Taxed income	108,804	
				152,267
	£483,801			£483,801

Since the passing of the Finance Act, 1914 (sec. 5), the item of £24,280 for foreign interest not remitted to this country, would also be taxable, but see p. 255.

The LORD PRESIDENT said that the Crown had always been allowed, when investments were held by a trading company, to tax the produce of the investments instead of the profits.

> "The Crown cannot charge the tax on both—that is to say, it cannot take a trading account which has money—its assets and investments—and first of all charge income tax upon the produce of investments, and then over and above, charge on the profits. It must elect between the two."

As regards the application under the 1890 Act, LORD MCLAREN, while admitting that he had no right to offer an opinion on the Commissioners' decision as there is no appeal therefrom by a Case Stated (see p. 329), said that—

> "If there were an appeal, I think a great deal might be said in support of it, because while the Commissioners were on the one hand insisting on the right of taxing investments as a separate thing, they on the other hand say it ought to be brought into the profit and loss account, and I think there is a great difficulty in seeing any logical connexion between these two positions of the Inland Revenue Authorities."

It is now enacted by sec. 12 of the Finance Act, 1915, that in claims under sec. 101 (p. 357), or the 1890 Act (p. 359), any income of an insurance company derived from the investment

of its life assurance fund shall be treated as part of the profits of the life business.

Profits.—An Insurance Company carrying on Fire, Life and Marine Insurance was assessable on the combined result of the different branches, and in the case of the Life branch, the excess of the receipts of a particular year over the expenses of that year does not give the amount of profit, which has to be ascertained by actuarial calculation. Sec. 11 of the Finance Act, 1915, however, provides that the life insurance business shall be assessed and treated separately.

It was laid down in *Scottish Union and National Insurance Company* v. *Smiles* (1889) (*y*) that—

(1) That the interest of investments which has not suffered deduction of Income Tax at its source must be taken into account in ascertaining the assessable amount of profits and gains of the company.

(2) Seeing that fire insurance policies are contracts for one year only, premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the same period and ordinary expenses, may be fairly taken as profits and gains of the company without taking into account or making any allowance for the balance of annual risks unexpired at the end of the financial year of the company. In *Sun Insurance Office* v. *Clark*, [1912] (*z*) a deduction may now be allowed for unexpired risks (see p. 251).

(3) That this rule is not applicable to the ascertainment of profits and gains upon the life business; that life policies are contracts of most variable endurance, and the premiums are in many cases not annual payments. The contract may endure for the policy-holder's life or for a certain number of years stated, or till the holder attains a certain age; and the company may be bound on the expiration of a fixed number of years, or on the attainment of a certain age by the policy-

(*y*) 26 Sc. L. R. 330; 16 R. 461; 2 Tax Cas. 551.
(*z*) A. C. 443; 81 L. J. K. B. 488; 106 L. T. 438; 28 T. L. R. 303; 56 S. J. 375; 6 Tax Cas. 59.

holder, either to pay a lump sum or an annuity for the remainder of the policy-holder's life. The premiums paid for such insurance may be paid all in one sum or by instalments within a fixed number of years, or annually during the holder's life, or during the subsistence of his policy. The premiums, therefore, do in no sense represent the annual profits and gains of the company. In like manner the amount of claims in one year arising on the death of persons insured, or as a deduction from the company's receipts for the year, cannot afford any criterion for the ascertainment of profits. A recently established company will receive a large amount of premiums and have few or no claims to meet. The profits and gains can be ascertained only by actuarial calculations, and this actuarial calculation may be obtained by taking the result of the quinquennial investigation prescribed by Statute or the periodical investigation in use in companies established before the Statute, or by an investigation covering the three years prescribed by Schedule D of the Income Tax Acts.

(4) Where the gain is made by the company (within the year of assessment or the three years prescribed by the Income Tax Acts, Schedule D), by realizing an investment at a larger price than was paid for it, the difference is to be reckoned among the profits and gains of the company.

Annuities.—It is provided by Rule 4 to Case 1 of Schedule D (p. 82), that, in arriving at the assessable profits, no deduction is to be made for any "annual interest, or any annuity or other annual payment payable out of such profits or gains," and by sec. 102 of the 1842 Act, that annuities shall be assessed unless "payable out of profits or gains brought into charge" separately. In *Gresham Life Assurance Society* v. *Styles*, [1892] (*a*), the Society sold annuities and stipulated that its capital stock, funds, and property should be liable in respect of the payment of those annuities. It was decided in the House of Lords that the annuities were not

(*a*) A. C. 309; 62 L. J. Q. B. 41; 67 L. T. 479; 56 J. P. 709; 41 W. R. 270; 3 Tax Cas. 185.

payable *out* of the profits or gains, and that therefore they could be deducted in arriving at the amount of assessable profits under Case 1 (see p. 256 as to interpretation of Rule 4).

Halsbury, L.C., stated that—

> "It would be an extraordinary thing to suggest that where a business consists of granting annuities it is to be taxed upon a different principle from any other commercial concern, and no one I suppose could doubt that in any other commercial concern, the cost of the thing sold to the trader is one of the expenses incident to the carrying on of the trade.
>
> "If an annuity seller is to be treated differently from a seller of any ordinary article of commerce, coals or corn, or the like, one would have expected to find some words in the Statute rendering him obnoxious to a different system of taxation, and enforcing a different mode of ascertaining profits, whereas it seems to me that the application of the general words 'profits and gains,' or 'balance of profits and gains,' are equally applicable whatever the commercial concern carried on may be."

His Lordship said further that the whole point turned upon the words "out of the profits or gains," and that, as profits or gains "must be ascertained on ordinary principles of commercial trading," it must be assumed that the framers of the Act intended deduction of the cost of the article sold to the trader, which he in turn makes his profits by selling. "You can no more refuse to take that cost into your consideration when ascertaining the balance of profits and gains than you could the cost of the coals or the corn to the coal merchant and to the corn merchant in ascertaining what are the profits from his trade."

Mersey Loan Company v. *Wootton* was disapproved.

A difficulty arose with the above decision when the alternate method of assessment on interest and dividends was adopted instead of on profits. In *Edinburgh Life Assurance Company* v. *Lord Advocate*, [1910] (*b*), decided in the House of Lords, the company were not charged on profits, as the interest and dividends exceeded the profits. The company deducted tax when paying annuities and claimed to retain the tax as the

(*b*) A. C. 143; 79 L. J. P. C. 41; 101 L. T. 826; 26 T. L. R. 146; 54 Sol. Jo. 133, [1910] S. C. (H.L.) 13; 47 Sc. L. R. 94; 5 Tax Cas. 472.

annuities were paid out of taxed income. The particular funds were earmarked for payment of the annuities.

It was held that the retention was admissible as the annuities were to be taken as payable *out* of the taxed income, so far as it would cover the annuity, but that the tax on any excess of annuity over taxed income must be paid over to the Revenue.

The question turned on sec. 21 (3) of the Customs and Inland Revenue Act, 1888 (p. 257), which enacts that a person paying an annuity charged under Schedule D, and which is *not* payable wholly out of profits or gains brought into charge, shall deduct tax and pay over to the Revenue the tax on the part not payable out of profits charged, and LORD ATKINSON held that where annuities are charged upon a tax-bearing fund sufficient to pay them, although not set apart for that purpose, they cannot be held to be "not payable" or "not wholly payable" out of profits brought into charge within sec. 24.

Sec. 13 of the Finance Act, 1915, enacts that the amount of annuities which an insurance company carrying on the business of granting annuities is entitled, under sec. 24 of the 1888 Act, to treat as having been paid out of profits brought into charge shall not exceed the taxed income of its "annuity fund." The latter is defined in the Act as meaning, where an annuity fund is not kept separately from the life assurance fund, such part of the life assurance fund as represents the liability of the company under its annuity contracts as stated in its periodical returns to the Board of Trade under the Assurance Companies Act, 1909.

(See also, *Sugden* v. *Leeds Corporation*, [1913] p. 278.)

Unexpired Risks.—In a Fire Insurance business there is, at the time of preparation of accounts, an element of unexpired risk, as premiums are paid in advance and do not commence at a uniform time, therefore they cover periods extending past the date of the accounts. It is contended therefore that an allowance should be made in respect of a reserve carried forward for unexpired risks.

The question was raised in *Sun Insurance Office* v. *Clark*, [1912] H. L. (*c*). The company had carried forward 40 per cent. of the yearly premium income and the Commissioners found as follows :—

(1) That the company is entitled to carry a percentage of fire premiums received in one year forward in reserve, in respect of unearned premiums which do not form part of the profits of the year.

(2) They found as a *fact* that, in the case of the Sun Fire Insurance Office, 40 per cent. was a reasonable and proper allowance. The Commissioners then directed that the assessment should be reduced accordingly.

The Crown did not question the correctness of the percentage, but only the principle of deduction. The assessment was based on the average of the three years ending 31st December, 1904, and during that period the provision of 40 per cent. increased by £56,334, and it was sought to deduct one-third thereof.

It was held that there was no rule of law as to the admissibility of a deduction for unexpired risks, but the question was one of fact, and on the facts found the allowance claimed was a proper one. LORD LOREBURN referred to the impracticability of ascertaining the actual profit and to the two following practicable methods of arriving at an estimated profit.

(*a*) Crediting merely the total premiums received and debiting the actual losses for three consecutive years.

(*b*) Carrying forward at the end of a year a percentage of the premium income in order to allow for unexpired risks.

> "There is no rule of law as to the proper way of making an estimate. There is no way of estimating, which is right or wrong in itself. It is a question of fact and figure whether the way of making the estimate in any case is the best way for that case. Experience seems to have satisfied Courts of Law for a considerable time that the method which I have described (*a*) is a useful working rule. But no one has said in this House that there is any constraint to accept it.

(*c*) A. C. 443 ; 81 L. J. K. B. 488 ; 106 L. T. 438 ; 28 T. L. R. 303 ; 56 S. J. 375 ; 6 Tax Cas. 59.

> "I am equally anxious that your Lordships should not be supposed to have laid down that the method applied by the Commissioners in the present case has any universal application. If the Crown wishes in any future instance to dispute it they can do so by evidence and it is not to be presumed that it is either right or wrong. A rule of thumb may be very desirable, but cannot be substituted for the only Rule of Law that I know of, viz.: that the true gains are to be ascertained as nearly as it can be done."

General Accident Fire and Life Assurance Corporation v. *McGowan* (*d*) was held to be no authority on the inadmissibility in *law* of the allowance claimed.

Bonuses.—Bonuses paid to life policy holders participating in "profits" are not deductible in arriving at assessable profits nor are additions made to the life fund, as the first is a distribution of income and the second a transfer of income to capital. *Last* v. *London Assurance Corporation* (1885), H. L. (*e*).

The first part alone went to the House of Lords.

The bonuses arise under certain policies which provide for two-thirds of the gross profits on the participating policies being divided, in cash or otherwise, every five years, amongst the holders of such policies.

LORD FITZGERALD agreed that the premium in question does not the less form part of the annual income, because that a part of the gross profits realized may be subsequently allotted to policy holders.

Mutual.—A mutual Life assurance company is not assessable on any surplus arising from the excess contributions of participating policy holders. The case of *Styles* v. *New York Life Assurance Company* (1889), H. L. (*f*), is of particular moment, not only to Insurance Companies, but to mutual concerns generally. If taxation were imposed it could be

(*d*) [1908] A. C. 207; [1908] S. C. (H.L.) 24; 45 Sc. L. R. 681; 77 L. J. P. C. 38; 98 L. T. 734; 24 T. L. R. 533; 52 Sol. Jo. 455; 5 Tax Cas. 308.

(*e*) 10 App. Cas. 438; 55 L. J. Q. B. 92; 53 L. T. 634; 50 J. P. 116; 34 W. R. 233; 2 Tax Cas. 100.

(*f*) 14 App. Cas. 381; 59 L. J. Q. B. 291; 61 L. T. 201; 2 Tax Cas. 460.

avoided by adjustment of contributions (see p. 149). The company had no *members* other than the holders of participating policies, to whom all the assets of the company belonged and who were liable for all losses. An actuarial valuation was made at the end of each year, and if the receipts exceeded the expenses and estimated liabilities, the surplus was divided amongst the participating policy holders in the shape of either a reduction in future premiums or of a reversionary addition to the amount of the policies. The divided surplus was partly excess premiums paid by participating policy holders over the cost of their insurance, and partly profits arising from non-participating policies, sale of life annuities, and other business with non-members.

In the House of Lords, opinion was divided, four Lords being in favour of the decision, and two against.

Lord Watson pointed out that in *Last* v. *London Assurance Corporation* (p. 252), the Corporation was a proprietary one, "or, in other words, the Corporation and its shareholders formed a body quite distinct in personality and in interest from the insured," but that the *New York Life Assurance Company*, so far as its membership was concerned, was constituted upon the principles of mutual assurance.

> "When a number of individuals agree to contribute funds for a common purpose, such as the payment of annuities, or of capital sums, to some or all of them, on the occurrence of events certain or uncertain, and stipulate that their contributions, so far as not required for that purpose, shall be repaid to them, I cannot conceive why they should be regarded as traders, or why contributions returned to them should be regarded as profits. That consideration appears to me to dispose of the present case. In my opinion, a member of the appellant company when he pays a premium makes a rateable contribution to a common fund, in which he and his co-partners are jointly interested, and which is divisible among them at the times and under the conditions specified in their policies. He pays according to an estimate of the amount which will be required for the common benefit; if his contribution proves to be insufficient he must make good the deficiency; if it exceeds what is ultimately found to be requisite, the excess is returned to him. For these reasons I have come to the conclusion that

the transactions of the appellant company, in so far as these relate to participating policies, do not constitute the carrying on of a trade within the meaning of the Income Tax Acts, and that the surplus funds returned or credited to its members are not profits."

LORD BRAMWELL cited the following example :—

"They are a Corporation, but the case may be, as is admitted, dealt with as though they were an unincorporated association of individuals. Take it that they were ; take it that a half-dozen persons so associated themselves at the beginning of the year ; they each put into a common purse £10 to be given to the executors of any one who dies, or divided, if more than one dies, among the executors of those having died. In fact, no one dies, and the money is returned or carried on for the next year. Is it possible to say that this is an association for the purpose of profit or that it has made any profit?"

LORD HERSCHELL said that if the members contribute more than is needed, and subsequent contributions are reduced by the excess, the latter cannot be considered as profit from a trade.

LORD MACNAGHTEN held that it was immaterial whether the surplus was applied as (*ante*) or paid back in cash, as in either case it was nothing more than the return of so much of the amount contributed as was in excess of the amount actually required. His Lordship could not regard that excess as gain or profit, and he could not see that persons contributing to a common fund in connexion with a scheme of mutual benefit could be said to make a profit when they have overcharged themselves.

LORD HALSBURY, who dissented from the decision, stated that his opinion would have differed had he been convinced that the members through *e.g.* miscalculation, had made excessive subscriptions and got back solely what they had oversubscribed, but he thought they got back more than that, as *e.g.* the enhanced value of the policy and their proportionate share of the good trading or fortunate adventure, which consisted of making contracts for payments of large sums which they had not been called upon to pay.

In the above case the company, which also issued policies to non-members, was held to be a mutual association so far as regards its transactions with non-members. In *Equitable Life Assurance Society of United States* v. *Bishop*, [1900] C. A. (*g*), the society had a London branch. A share capital of 100,000 dollars invested in securities is required of every Life Insurance Society by the law of the State of New York. The shareholders were, under their Charter, entitled to a dividend not exceeding 7 per cent. per annum. The earnings of the society over the dividends, losses, and expenses were to be accumulated, and every five years each participating policy holder was to be credited with a portion of the available surplus. Non-participating as well as participating policies were issued, and other business, such as the granting of annuities, was undertaken. The profits from all sources went to form the surplus. Exemption was claimed in respect of the surplus arising in connexion with the participating policies. It was held that the whole profits of the branch were assessable.

Last v. *London Assurance Company* (p. 252) was held to be indistinguishable, and *Styles* v. *New York Life Assurance Company* (p. 252) distinguishable. It was pointed out by VAUGHAN WILLIAMS, L.J., that the company did not, in respect of the surplus arising in connexion with the participating policies, pay back all to the members of the Mutual Association, but paid it to a body outside the aggregate of the participating policy holders, in the shape of the 7 per cent. dividend to the shareholders.

Investments.—See *Norwich Union Fire Insurance Company* v. *Magee*, [1896] (*h*), which decided that interest from American securities held by the Company formed part of the profit assessable under Case 1.

In *Liverpool and London and Globe Insurance Co.* v. *Bennett*,

(*g*) [1899] 2 Q. B. 439; 68 L. J. Q. B. 772; 47 W. R. 556; 80 L. T. 728; 15 T. L. 376; affirmed [1900] 1 Q. B. 177; 69 L. J. Q. B. 252; 48 W. R. 341; 81 L. T. 693; 16 T. L. R. 74; 4 Tax Cas. 147.

(*h*) 73 L. T. 733; 44 W. R. 384; 3 Tax Cas. 457.

[1913] H. L. (*i*), the Company, which carried on fire and life Insurance business at home, also carried on a fire Insurance business abroad. The Company was registered in this country and had its head office here. The Memorandum provided for the investment of monies not immediately required, and, in compliance with the laws of certain foreign States in which the Company carried on business, investments were made there. Other sums consisting of accumulated profits of the business were voluntarily invested there.

It was held that the interest from the investments formed part of the profits or gains of the business and was assessable under Case 1 (see p. 46) irrespective of whether it were retained abroad or remitted to this country, and of whether the investments were compulsory or not. It was further held that the Crown cannot be compelled to proceed under Case 4 or 5, if it prefers to proceed under Case 1.

INTEREST (Deduction of).

Payable out of Profits.—It is provided by Rule 4 to Case 1, Schedule D:—

> "In estimating the amount of the profits and gains arising as aforesaid no deduction shall be made on account of any annual interest, or any annuity or other annual payment, **payable out of** such profits or gains."

This rule, in prohibiting deduction of *annual* interest, does not cover interest on *short loans* or *temporary advances* or *trade interests and discounts*, which are allowable.

The Rule refers to items payable *out* of profits. LORD WATSON, in *Gresham Life Assurance Society* v. *Styles*, [1892] H. L. (*k*), in defining the scope of Rule 4, said—

> "In order to bring annuities or other annual payments within the scope of the Rule, they must, in my opinion, either be directly charged upon profits, or be in themselves of such

(*i*) A. C. 610; 82 L. J. K. B. 1221; 109 L. T. 483; 29 T. L. R. 757; 57 S. J. 739; 20 Mans. 295; 6 Tax Cas. 327.
(*k*) A. C. 309; 62 L. J. Q. B. 41; 67 L. T. 479; 56 J. P. 709; 41 W. R. 270; 3 Tax Cas. 185.

a character that they form a proper charge upon profits. An annuity to the widow of a deceased partner, interest on capital advanced by a partner, or upon money borrowed for the purposes of the business, are truly payable out of profits earned, and therefore ought not to be deducted in estimating the income yielded by the business."

By sec. 102 of the 1842 Act, the above payments may not be separately assessed, but tax may be deducted on making the payments, so that the trader does not *bear* the tax.

Not payable out of Profits.—In order to maintain taxation at the source, sec. 24 (3) of the Customs and Inland Revenue Act, 1888, enacts—

> Upon payment of any interest of money or annuities charged with Income Tax under Schedule D, and **not payable, or not wholly payable, out of profits or gains brought into charge** to such tax, the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of income tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge, as the case may be; and such amount shall be a debt from such person to her Majesty, and recoverable as such accordingly.

The above sub-section meets the case of interest paid out of capital during the construction of works. In *Lord Advocate* v. *Forth Bridge Railway Company*, [1890] (*l*), the company paid share and debenture interest during the construction, and it was held that the tax deducted by the company must be paid over to the Crown under sec. 24 (3). See p. 250.

If the assessable profit calculated on the average is not sufficient to cover the interest payable in the year of assessment, the balance is recoverable under sec. 24 (3).

Short Loans.—See *Farmer* v. *Scottish North American Trust, Ltd.*, [1912] (*m*) (p. 140).

In *De Peyer* v. *The King* (1909) (*n*), a loan was obtained

(*l*) 28 Sc. L. R. 576; 3 Tax Cas. 1.
(*m*) A. C. 118; 81 L. J. P. C. 81; 105 L. T. 833; 28 T. L. R. 142; 5 Tax Cas. 693.
(*n*) 100 L. T. 256.

from a bank in order to take up certain stock. Bank rate was charged, but a maximum of 4½ per cent. was fixed and the loan was at the borrower's option for two years. The loan was, however, paid off in less than a year, and the interest was paid out of income which had been taxed by deduction.

It was held that the loan was for a period less than a year, that the interest was not yearly interest, that tax could not be deducted, and that there was no claim against the Board of Inland Revenue for repayment.

See, however, the Board's practice (*post*).

Guaranteed Interest.—Interest paid under a guarantee during construction or during an unproductive stage is assessable.

In *Blake* v. *Imperial Brazilian Railway* (1884), C. A. (*o*), the railway company constructed a railway under a Government guarantee of 7 per cent. Capital was raised by Debentures at 5½ per cent. and the 7 per cent. was utilized for:—

(*a*) payment of debenture interest, and

(*b*) formation of a sinking fund to pay off debentures.

It was held that the whole sum paid under the guarantee was assessable as interest.

In *Nizam's Guaranteed State Railway Co.* v. *Wyatt* (1890) (*p*), the Company constructed a railway in Hyderabad, and the Nizam's Government guaranteed an annuity for twenty years of 5 per cent. on the issued share and debenture capital. The guaranteed annuity was applied in:—

(*a*) payment of interest on share capital at 5 per cent. and on debentures at 4 per cent;

(*b*) formation of a sinking fund for redemption of debentures out of the 1 per cent. excess of annuity over debenture interest paid.

It was contended that the sums placed to the sinking fund were not assessable, but it was held, following *Blake* v.

(*o*) 1 T. L. R. 68; 2 Tax Cas. 58.
(*p*) 24 Q. B. D. 548; 59 L. J. Q. B. 430; 62 L. T. 765; 2 Tax Cas. 584.

Imperial Brazilian Railway (*ante*), that the whole amount was assessable.

A condition was attached to the annuities that they should be repayable with interest out of future profits.

The question of guaranteed interest also arose in *Pretoria-Pietersburg Railway Co.* v. *Elwood* (1908) (*q*), where interest of 4 per cent. on the share capital was guaranteed by the South African Republic but, during the Boer War, the British military authorities took possession of the railway. The British Government subsequently declared its intention of expropriating the railway under the terms of the concession granted by the Republic, and it was agreed that all arrears of the guaranteed interest should be paid. It was decided that these arrears did not form a purchase price of the railway, but gross revenue which was assessable, and fell into the three years' average.

Bank Interest.—In *Anglo-Continental Guano Works* v. *Bell* (1894) (*r*), the Company, which was of German origin, had a London branch, and in order to pay cash for goods purchased, the branch obtained short loans from bankers and paid interest thereon. It was held that the interest was not a deduction.

The judgment in this case was not approved in *Scottish North American Trust* v. *Farmer* (p. 140), and Lord Johnston pointed out that such interest was allowed in practice.

In practice, Bank interest payable was dealt with as follows, and sec. 22 of the Finance Act, 1915, introduces legal support in providing that where interest payable in the United Kingdom on an advance from a bank carrying on a *bonâ fide* banking business in the United Kingdom is paid without deduction of tax *out of profits brought into charge*, the Special Commissioners are required to grant repayment of tax on such interest.

Board's Practice in Claims to Repayment of Income

(*q*) 98 L. T. 741 ; 6 Tax Cas. 508.
(*r*) 70 L. T. 670 ; 58 J. P. 383 ; 10 R. 161 ; 3 Tax Cas. 239.

Tax on Interest Paid in Full to Bankers on Loans, Advances, and Overdrafts, or Current Accounts.—(1) *Interest on a fixed sum advanced on a formal legal mortgage at a fixed rate per cent. per annum.* This is undoubtedly *annual interest* from which payer is entitled to deduct tax and the Board do not as a rule admit such claims for repayment. The Board, however, reserve discretion to grant relief where special circumstances may require it. The Board, acting on this principle, have allowed repayment in a case almost, but not precisely, within the terms of this head, the rate of interest being fixed and the loan, the amount of which was not fixed, being secured by deposit of deeds of property, and in which provision was made for execution of legal mortgage if and when required.

(2) Interest on a fixed sum advanced for a period less than a year without formal legal mortgage, but secured by deposit of deeds or other securities at rates of interest fluctuating with bank rate but with a fixed minimum rate per cent.

(3) The same for a period less than a year, but afterwards extended so as to make the period a year or more.

In these cases it is doubtful whether interest is annual or not. In view of doubt, if interest has been paid in full to the bank out of taxed source, and has been taken into account in computing the Bank's liability to assessment, *whether there be any direct assessment upon the Bank under Case* 1 *of Schedule D or not*, the Board admits claim from borrower to repayment of income tax if such claim is supported by an adequate certificate upon a prescribed form from the Bankers.

(4) Interest at varying rates on fluctuating amounts advanced for no fixed period and secured by deposit of deeds.

(5) Interest on overdrawn current accounts at fluctuating rates secured by deposit of deeds or other security.

In these cases, interest is clearly not annual, and strictly speaking payer has no right to deduct tax on payment thereof or to claim repayment on the ground that deduction had been refused by Bankers. But in such cases when interest has

been payable over a period of one or more years so as in fact to constitute an *annual* charge on the taxed income of the borrower, the Board admits claim to repayment under same conditions as those mentioned in (2) and (3).

(6) Where a trader, in the course of his business, obtains advances from a bank for short periods for the purpose of carrying on that business, it is the practice to allow the bank charges on such advances as an expense in arriving at the trader's profits, for Schedule D Assessment. In no case will the Board repay the trader in respect of borrowed money used for purposes of his business even if there is no profit from which to deduct bank interest.

When interest is admitted to be of such a nature as to give the borrower, under the Board's practice, a title to claim repayment, such interest is admitted as a deduction in computing the borrower's income for purpose of exemption or abatement claims. (See p. 332.)

All cases except (6) are dealt with *only* by repayment. The Board does not in any case admit a claim for repayment in respect of interest paid to persons other than bankers, such as Insurance Companies, Brokers, Financial Agents, etc.

See MUNICIPAL for interest, p. 278.

See BUILDING SOCIETY, p. 121.

See FINANCIAL COMPANIES, p. 193.

Deduction of Tax. -By sec. 40 of the 1853 Act, tax is deductible at the rate in force when the payment becomes due, and by sec. 24 (3) of the Customs and Inland Revenue Act, 1888, at the rate in force at the time of payment. By sec. 15 of the Revenue (No. 1) Act, 1864, sec. 40 is amended to allow deduction at the rates applicable during the period in which the payment has accrued due.

See p. 33 for deduction under Schedule A and p. 380 for deduction generally.

Contracting out. -Sec. 103 provides that a refusal to allow deduction of tax from interest, rent, etc., shall be

subject to penalties, and that any covenant to pay without deduction is void as regards the particular covenant alone.

See *Blount* v. *Blount* (1915), at p. 268, where sec. 103 was held to be conclusive although the payments were covenanted to be made "free of income tax."

See as to basis of inclusion of Dividends, etc., in arriving at "total income" for abatement, etc., p. 334.

(See "The Provisional Collection of Taxes Act," 1913, p. 381.)

INTEREST (Assessment of).

Interest is a distinct subject-matter of assessment by sec. 2 of the 1853 Act, which charges "all interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other Schedules."

Sec. 102 of the 1842 Act charges under Case 3 of Schedule D (p. 63), when the payments are not made out of profits brought into charge:—

All annuities, yearly interest of money, or other annual payments whether payable within or without the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether the same shall be received and payable half-yearly or at any shorter or more distant periods.

Where the above payments are payable out of profits brought into charge the assessment is on the payer who is entitled to deduct tax when making the payment.

Where any interest is not reserved or charged or payable for the period of one year the assessment is under Case 3 of Schedule D.

As regards loans secured on Rates, see MUNICIPAL, p. 278.

Yearly Interest.—An important case defining "yearly interest" is that of *Garston Overseers* v. *Carlisle* (1915) (*a*). The overseers kept a current account with a bank and paid rates

(*a*) 3 K. B. 381; 84 L. J. K. B. 2016; 13 L. G. R. 969; 139 L. T. 879.

into that account from time to time while payments were made out of the account, and they contended that under sec. 105 of the 1842 Act (p. 400) they were exempt, as being charitable trustees, in respect of "yearly interest," but it was advanced before the Commissioners that the procedure under sec. 105 was not by "appeal," and that, therefore, a case for the High Court could not be demanded. The case was, however, stated raising the question of whether the interest was "yearly interest" or not.

Rowlatt, J., while refusing to express an opinion whether the overseers were trustees for charitable purposes or not, ruled that "yearly interest" under sec. 105 is the same as under sec. 40 of the 1853 Act (p. 261), and that the broad result of decisions on the latter section is that "yearly interest means, substantially, interest irrespective of the precise time in which it is collected, interest on sums which are outstanding by way of investment as opposed to short loans or as opposed to moneys presently payable and held over or anything of that kind." The bank allowed interest calculated on the fluctuating daily balances, etc. Justice Rowlatt laid down that the overseers could not raise a capital fund and invest it at interest, that the balance is not even a short loan, but merely money at call and payable on demand, and that he was at a loss to see how, in the light of the authorities, he "could have any doubt whatever but that this is not yearly interest."

Annuities and Instalments.—In *East India Railway* v. *Secretary of State for India*, [1905] (*t*) the Secretary of State availed himself of his powers of purchasing a railway, the purchase price of which was in the form of an annuity payable half-yearly for seventy-three years. The annuity was £5 12*s.* 6*d.* for each £100 of capital stock commuted at £125 and was calculated on the basis of £5 7*s.* 6*d.*, being interest at £4 6*s.* per cent. on £125 and 5*s.* being the amount required to be set aside and invested in order to give, through a sinking

(*t*) 2 K. B. 413; 74 L. J. K. B. 779; 93 L. T. 220; 54 W. R. 4.

fund, the capital sum of £125 at the expiration of the period of seventy-three years.

It was held that the annuity consisted partly of capital and partly of interest, that tax was only payable on the portion representing interest on unpaid capital, and that the capital portion must be taken as continually increasing and the interest portion as continually decreasing.

See also *Scoble and Others* v. *Secretary of State for India*, [1903] H. L. (*u*).

The case of *Delage* v. *Nugget Polish Co.* (1905) (*v*), raised the question of the assessability of certain payments. The company acquired the exclusive rights of manufacturing and selling articles made by a secret process, and the right was to be paid for in the shape of 8 per cent. on the gross receipts for forty years. The recipient of such payments was a foreigner resident abroad and the company deducted tax.

It was decided that the payment was an annuity or annual payment payable out of profits or gains and that the company could deduct tax. The case was distinguished from *Foley* v. *Fletcher* (p. 275) and *Scoble and Others* v. *Secretary of State for India* (p. 264) as there was no first ascertainment of a lump sum, and he held that sec. 40 of the 1853 Act (p. 261) is not limited to cases where annuities are paid out of profits or gains.

In *Chadwick* v. *Pearl Life Assurance Co.*, [1905] (*x*), Mr. JUSTICE WALTON stated that there is a difficulty in distinguishing between an agreement to pay a debt by instalments and an agreement for good consideration to make certain annual payments for a fixed number of years. The distinction depended upon whether the agreement involved an obligation to pay a fixed sum. In the above case a leaseholder assigned his interest to his sub-lessees in consideration

(*u*) A. C. 299; 72 L. J. K. B. 617; 89 L. T. 1; 51 W. R. 675; 4 Tax Cas. 618.

(*v*) 92 L. T. 682; 21 T. L. R. 454.

(*x*) 2 K. B. 507; 74 L. J. K. B. 671; 93 L. T. 25; 54 W. R. 78; 21 T. L. R. 456.

of £1000 and also £1625 per annum, payable quarterly, for the residue of the term. The latter amount was the rent paid by the sub-lessees prior to the assignment. It was held that the payments were an annuity or other annual payment within sec. 40 of the 1853 Act and that, therefore, tax was deductible.

Retiring Annuity. It was decided in *Duncan's Exors.* v. *Farmer* (1909) (*y*), that an annuity paid to a Minister of the Church of Scotland on his retirement owing to ill-health and on his complete severance from the parish, was assessable under Case 6 of Schedule D (p. 63).

Bankruptcy.—In *re Cooper*, [1911] C. A. (*z*), a bankruptcy notice required payment of £3753 11*s.* 4*d.* made up of £3750 5*s.* 8*d.* judgment debt and £3 5*s.* 8*d.* interest at 4 per cent., and it was held that the claim for interest in full was in order as a judgment debt was not "yearly interest."

Bank Interest.—Bank Interest is assessable under Case 3 of Schedule D (p. 63) on the recipient, also "the profits on all securities bearing interest payable out of the public Revenue (except securities before directed to be charged under the rules of Schedule C), and on all discounts, and on all interest of money, not being annual interest, payable or paid by any person whatever," the basis being the preceding year, which in practice is usually the calendar year.

With new deposits, assessments made for the first two years on the interest of the first year (see p. 47) are inequitable if the interest falls, but the Board has admitted assessment for the first three years on the actual interest of the current year.

Bank Interest can only be assessed on personal declaration, as the Revenue has no means of checking the correctness of the amount given by the recipient, but, on a death occurring, particulars of bank deposits appearing in the Inland Revenue affidavit leading to the grant of Probate are extracted, and

(*y*) S. C. 1212; 46 Sc. L. R. 857; 5 Tax Cas. 417.
(*z*) 2 K. B. 550; 80 L. J. K. B. 990; 105 L. T. 273; 55 S. J. 554.

back duty claimed for past years if it appears that interest has accrued in such years.

In *Glamorgan Quarter Sessions* v. *Wilson*, [1910] (*a*), unused payments in the shape of Compensation Levy (p. 113) were deposited at a bank, and it was held that the interest thereon was assessable on the Quarter Sessions. This case was followed in *Matthews* v. *Cork County Council*, [1910] (*b*), where the County Fund was deposited in the name of the County Treasurer, and it was held that the Council was liable to assessment on the interest.

Bank deposits for fixed periods at fixed rates are subject to deduction and are not assessable on recipient.

The taxed income from Investments of a business concern are added back in computing profits.

See REALIZATION OF INVESTMENTS, p. 145.

See INSURANCE COMPANIES, p. 242, and FINANCIAL COMPANIES, p. 193, and MUNICIPAL, p. 278.

See p. 259, for Interest payable.

IRON WORKS.

Iron Works are assessable under No. III. of Schedule A on the profits of the preceding year, but this does not apply to ironworks in which iron goods are manufactured, such as tube works, but refers to raw material.

LEGAL COSTS.

Legal costs in connexion with the recovery of trade debts and in defending existing trading rights, such as opposition to the passage of Parliamentary bills or provisional orders which may be derogatory to the particular trading interest, are allowed in practice.

Legal costs in connexion with "tied" houses are now admissible (see p. 104).

(*a*) 1 K. B. 725; 79 L. J. K. B. 454; 102 L. T. 500; 5 Tax Cas. 537.
(*b*) 2 I. R. 521; 5 Tax Cas. 545.

LEVELS.

Levels are assessable under No. III. of Schedule A.

LICENSING APPLICATION.

See BREWERIES, p. 101.

LOSS.

A loss of capital is not allowable, neither is a loss not connected with the trade, but a loss on one business may be set off against a loss on another business owned by the same person (sec. 101 of the 1842 Act. See p. 357), and, on the accounts of the *current* year showing a loss, while the assessment on the average has shown a profit, the loss may be set off against the assessment or any other taxed income (sec. 23 of Customs and Inland Revenue Act, 1890. See p. 359).

Deduction is not allowable for a loss recoverable under an Insurance or contract of indemnity.

See FIRE, p. 198.

MAINTENANCE.

No allowance is made for maintenance of the person assessable or of his family, except in regard to part of the rent of a dwelling-house occupied partly for the purpose of trade. (See p. 82.)

MARRIED WOMEN.

The income of a married woman living with her husband is chargeable in the name of the husband (sec. 45 of the 1842 Act), and the incomes of a husband and wife are counted as one for Income Tax purposes, subject to the conditions (*post*).

Separation.—When the husband and wife are living apart the respective incomes are separately treated as if the persons were unmarried.

The husband is entitled to deduct tax when paying alimony, but deduction must be made from the actual payments as it

cannot be subsequently claimed. See *Shrewsbury* v. *Shrewsbury* (1906) (*c*), and *Barry* v. *Smart*, [1906] (*d*).

In *Blount* v. *Blount* (1916) (*e*) permanent maintenance was payable under order of the Court, and the terms of the order provided that payment should be at "the rate of £62 10*s*. per quarter (free of income-tax)." In the indenture consequent on the order the defendant covenanted to pay to the plaintiff "the quarterly sum of £62 10*s*. free of income tax." The payments were made without deduction of tax until March, 1915, when tax on the payment then due and on the three previous payments was deducted. It was held that sec. 103 of the 1842 Act was conclusive in its provision that a covenant to pay without deduction is void and that, therefore, tax was rightly deducted in respect of the March payment, but not in respect of the previous payments. See p. 33.

Joint Incomes. It is provided by sec. 5 of the Finance Act, 1897, that when the total joint income of a husband and wife does not exceed £500, and part thereof is derived from a business carried on by the personal labour of the wife, a claim for exemption or abatement shall be dealt with "as if it were a claim in respect of the said profits of the wife, and a separate claim on the part of the husband in respect of the rest of the total income."

Sec. 9 of the Finance Act, 1914, introduced the following amendments, but it retained the aggregation of incomes for exemption and abatement and Super Tax purposes:—

> (1) If an application is made for the purpose in such manner and form as may be prescribed by the Commissioners of Inland Revenue, either by a husband or wife, within six months before the sixth day of May in any income tax year—
>
> (*a*) Income tax (including super-tax) for that year shall be assessed, charged, and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of the Income Tax Acts with respect to the assessment, charge, and recovery of income tax (including super-tax), and the

(*c*) 23 T. L. R. 100.
(*d*) 2 Ch. 358; 75 L. J. Ch. 676; 95 L. T. 165; 54 W. R. 621.
(*e*) 1 K. B. 230.

penalties for failure to make a return, shall apply as if they were not married; and

(*b*) All the provisions of the Income Tax Acts which relate to claims for exemption, relief, or abatement, and the proof to be given with respect to those claims, shall also apply as if they were not married; and a claim under section five of the Finance Act, 1897 (which relates to the exemption of the income of a married woman in certain cases), may be made by the wife as well as by the husband; and

(*c*) The income of the husband and wife shall be treated as one in estimating the amount to be repaid or allowed in respect of any exemption, relief, or abatement which depends wholly or partially on total income, (except so far as otherwise required for the purpose of dealing with any claim for exemption, relief, or abatement under section five of the Finance Act, 1897), and the total amount of any exemption, relief, or abatement given in respect of the incomes of the husband and wife shall not exceed that which would have been given if an application had not been made under this section; and

(*d*) The benefit of any such exemption, relief, or abatement may be given either by way of reduction of assessment, or by repayment of any excess of tax which has been paid, or by both of those means, as the case requires, and shall, in the case of relief given in respect of earned income (including any exemption, relief, or abatement given in respect of the profits of a wife from a business in pursuance of section five of the Finance Act, 1897), be given in proportion to the income earned respectively by the husband and the wife, in the case of relief given in respect of insurance premiums, be given to the husband or wife, as the case may be, by whom the premium is paid, and, in any other case, be given in proportion to the respective incomes of the husband and wife; and

(*e*) for the purpose of any exemption, relief, or abatement, a return may be made by the husband or the wife of the total income of the husband and wife, but if the Commissioners of Inland Revenue are not satisfied with such return they may obtain a return from the wife or husband, as the case may be; and

(*f*) the income of the husband and wife shall be treated as one in estimating total income for the purpose of super-tax, and the amount of super-tax payable in respect of the total income shall be divided between the husband and wife in proportion to their respective incomes, and the total amount payable shall not be

less than it would have been if an application had not been made under this section.

(2) The Commissioners of Inland Revenue may require returns for the purposes of this section to be made at any time, and section fifty-five of the Income Tax Act, 1842, shall, with the necessary modifications, apply in the case of the refusal or neglect to make or wilful delay in making any such return.

(3) Where income tax (including super-tax) is charged on the profits or income of a married woman, in pursuance of this section, the power to distrain in the case of non-payment of any income tax payable by the wife shall extend to the goods and chattels of the husband as well as to the goods and chattels of the wife:

Provided that no distraint shall be so made on the goods and chattels of the husband unless a written demand for payment shall first have been made on the husband or left for him at his usual place of residence, and he shall have failed to pay the amount of tax payable by his wife within seven days of such demand.

Deduction.—In *Purdie* v. *Rex*, [1914] (*e*), a married woman living with her husband held shares in a company and tax was duly deducted. It was contended that tax was charged contrary to the requirement of sec. 45 of the 1842 Act (p. 267) that the charge shall be in the name of the husband, but it was held that tax was not charged contrary to sec. 45 as the *charge* was upon the company.

MARKET TOLLS.

Market tolls are assessable under No. III. of Schedule A on the profits of the preceding year.

MARKET GARDENS.

See p. 43.

MILK SELLERS.

See p. 145.

MINES.

Mines are assessable under No. III. of Schedule A on the average profits of the five preceding years. No. III. covers "mines of coal, tin, lead, copper, mundic, iron, and other

(*e*) 3 K. B. 112; 83 L. J. K. B. 328; 30 T. L. R. 553.

mines." The words "other mines" mean similar mines, in accordance with the legal interpretation of sweeping words. (See p. 302.)

(See p. 55 for treatment of No. III. of Schedule A in regard to the applicability of the Rules of Schedule D.)

Setting off Losses.—Rule 3 of No. III. provides as follows:—

> Nothing herein contained shall be construed to restrain any adventurer so separately assessed from deducting or setting against his profits acquired in one or more of *such* concerns his loss sustained in any other of the *said* concerns, over and above the profits thereof, provided that such loss shall not exceed the proportion of such adventurer which shall have been duly proved by the company in their computation of duty and shall have been allowed by the respective Commissioners, and in every such case one assessment only shall be made on the balance of such profit and loss of the adventurer so separating his account in the parish or place where such adventurer shall be chargeable to the greatest amount; and the amount of each person's share so proved and allowed shall be deducted from the general assessment of the company or companies to which such adventurer shall belong.
>
> (See sec. 101 of 1842 Act, pp. 59, 357.)

Mines are assessable in the parish in which the shafts are put down.

Failing Mines.—Provision is made for failing Mines as follows:—

Rule 5 to No. IV. of Schedule A.—If any mine has, from some unavoidable cause, been decreased, and is decreasing in the annual value thereof, so that the average of five years will not give a fair and just estimate of the annual value thereof, it shall be lawful, after due proof before the Commissioners for general purposes in the district where such mine shall be situate, to compute such annual value on the actual amount of such profits and gains in the preceding year ending as aforesaid, subject to such abatement on account of diminution of duty within the current year as is herein provided in other cases; and if any such mine shall, from some unavoidable cause, have wholly failed, it shall be lawful for the

said commissioners, on due proof thereof, wholly to discharge any assessment made thereon.

The above provision is sufficiently extensive to apply not only to worked-out mines, but to mines shut-down owing to, *e.g.*, seams being too thin to work profitably or too poor in quality. It may be contended that the above rule cannot operate as regards mines *failing*, unless the plant is sold off.

Deductions.—The assessment of mines is particularly inequitable owing to the Income Tax Acts making no allowance for sums placed to reserves for wasting assets. (See p. 131.) The working of mines extensively involves the element of wasting assets, and assume, *e.g.*, a coal mine with a life of sixty years was opened and the following expenditure incurred :—

(1) Purchase price of seams *in situ* . . .	£100,000
(2) Shaft sinking	100,000
(3) Development expenses	100,000
	£300,000

The proprietors would obviously annually place sums (probably based on tonnage raised) to reserves for replacement of that expenditure, so that on the colliery being worked out, the entire capital would still be intact.

The present system involves, by non-allowance of such payments, taxation of capital. (See p. 130.)

Conciliation Board Expenses.—Payments to Conciliation Boards are admissible as a deduction. *Lochgelly Iron and Coal Co., Ltd.*, v. *Crawford*, [1913] (*f*).

Coal Owners' Association.—A deduction is not permitted *in law* for subscriptions (based on output) to a Coal Owners' Association, which subscriptions indemnify members against stoppage caused by strikes, etc. *Rhymney Iron Co., Ltd.*, v. *Fowler*, [1896] (*g*). In practice, however, the allowance is made. (See SUBSCRIPTIONS, p. 290.)

(*f*) S. C. 810; 50 Sc. L. R. 597; 6 Tax Cas. 267.
(*g*) 2 Q. B. 79; 65 L. J. Q. B. 524; 44 W. R. 651; 3 Tax Cas. 476.

Dead Rents.—See p. 157 as to the non-allowance in respect of recoupment of dead rents.

Experiments.—A deduction is not allowable in respect of contributions to a levy for experimenting in coal dust, although such experiments were undertaken by a Coal Owners' Association at the request of the Government. *Lochgelly Iron and Coal Co., Ltd.*, v. *Crawford*, [1913] (*h*).

Mining Association. Subscriptions to the Mining Association of Great Britain are not admissible as a deduction. *Lochgelly Iron and Coal Co., Ltd.*, v. *Crawford*, [1913] (*i*).

Pit Sinking.—The cost of pit sinking cannot be deducted. In *Coltness Iron Co.* v. *Black* (1881), H. L. (*k*), LORD MURE said that a great deal of the sinking was through hard rock involving enormous expenditure, and that such expenditure could clearly only be treated as capital.

> "The case is obviously quite different from that which was put in argument in reference to stirring the soil for the purpose of getting at stone lying near the surface, in which practically the whole operation is that of cutting the stone, and where you have no expenditure which you can fairly distinguish from ordinary expenditure."

The LORD PRESIDENT in *Addie and Sons* v. *I. R.* (1875) (*l*), said—

> "The making of a new pit in a trade of this kind is in every sense of the term just an expenditure of capital. It is an investment of money, of capital, and must be placed to capital account in any properly kept books applicable to such a concern."

In *Bonner* v. *Basset Mines, Ltd.*, [1912] (*m*), the ore accessible from the original level had been practically worked out, and the company claimed deduction of the cost of deepening a main shaft. The Commissioners decided that

(*h*) S. C. 810; 50 Sc. L. R. 597; 6 Tax Cas. 267.
(*i*) S. C. 810; 50 Sc. L. R. 597; 6 Tax Cas. 267.
(*k*) 6 App. Cas. 315; 51 L. J. Q. B. 626; 45 L. T. 145; 46 J. P. 20; 29 W. R. 717; 1 Tax Cas. 287.
(*l*) 12 Sc. L. R. 274; 2 R. 431; 1 Tax Cas. 1.
(*m*) 134 L. T. Jo. 180; 6 Tax Cas. 146.

the expenditure was a proper working cost and allowed it accordingly, but it was held in the Divisional Court that there was no evidence on which such opinion could be supported. (See p. 325 as to the conclusiveness of the Commissioners' findings on points of *fact*.)

The company sank the shaft, which was vertical, some fifty fathoms down, and such extension, together with the old portion, was used as a ventilating shaft, and as a centre from which levels and roads could be cut for the purpose of exploring and discovering lodes or pockets of ore at a level below those portions of the mine which had been wholly or partially exhausted, and also for the purpose of raising and lowering men and materials, but not for the purpose of following and winning ore from vertical lode.

The company had excavated the necessary ground and built a station at the foot of such shaft as extended, and had driven main cross-cut tunnels from the foot of such shaft. The new portion of the shaft was a permanent and lasting construction, timbered, built and equipped in the same manner as the upper portion of the shaft, and as an efficient extension thereof, being fitted with cage rods and also with pumping apparatus.

HORRIDGE, J., held that the Commissioners' finding that the expenditure was a proper working cost, being a finding of fact, was binding on him if there was any evidence before the Commissioners on which they could find that such an expenditure was a proper working cost. He decided that the expenditure was attributable to capital and that the old mine had become practically, if not wholly, exhausted, and the company, by lengthening this shaft to the considerable extent they did, were in effect opening up a new mine. *Morant* v. *Wheal Grenville Mining Co.* (*post*) was referred to.

Wagons.—See p. 237, for allowance in respect of wagons acquired on a hire-purchase agreement.

Subsidence.—A deduction is allowable, in practice, for damages paid on claims for subsidence of the surface.

Subscriptions.—(See *ante*, and p. 290.)

Cost Book Mines.—In *Morant* v. *Wheal Grenville Mining Co.*, [1894] (*n*), a call was made on the shareholders of a cost book mine for the sinking of a new shaft, and a claim was made to deduct the amount expended out of such call. The Commissioners allowed the claim, holding that "capital" did not exist in the case of a cost book mine.

It was held that the deduction could not be made.

WRIGHT, J., defined the admissibility of such expenses as being controlled by the question as to whether "the sinking of a new shaft such as this would be so frequently and ordinarily necessary as to be part of the ordinary working expense," and he said—

> "One can very well imagine in case of mines, where the minerals lay at shallow depths, and where it was necessary to open them out from time to time frequently by shallow shafts, that in those cases it might well be that the sinking of shafts would be properly treated as part of the ordinary working expenditure. On the other hand, you have a case such as I suppose the present case is, where a large area of ground has been worked from one shaft, and it is apprehended that it will soon become impossible to work any further from that shaft, and a new mine, so to speak, must be opened by a new shaft altogether."

Foreign Mines.—Foreign mines are assessable under Schedule D, not under No. III. of Schedule A. *Alianza Company* v. *Bell*, [1906] H. L. (*o*).

See also *Foley* v. *Fletcher* (1858) (*z*).

MINORS.

The guardian of an infant is responsible for performing the requirements of the income tax law. Sec. 41 of the Income Tax Act, 1842, provides that the guardian of an infant "having the direction, control, or management of the property or concern of the infant shall be chargeable."

(*n*) 71 L. T. 758; 3 Tax Cas. 298.

(*o*) A. C. 18; 75 L. J. K. B. 44; 93 L. T. 705; 54 W. R. 413; 22 T. L. R. 94; 5 Tax Cas. 172.

(*z*) 28 L. J. Ex. 100; 3 H. & N. 769; 7 W. R. 141.

In *The King* v. *Income Tax Commissioners for Newmarket* (1915) (*a*), it was laid down that an infant is not personally chargeable, so that if he has no parent or guardian he escapes assessment. Sec. 41 was held not to apply solely when there was a guardian in receipt of the profits and leaving an unrepresented infant to be within the general charging section relating to all "persons," but that it assumed an infant to be unassessable except through a guardian. Sec. 173 of the 1842 Act provides that a guardian shall be responsible for any unpaid tax of "a person chargeable" who is "under the age of 21 years" on default of payment "by such infant." This was held to be merely machinery and not to introduce any liability of an infant not otherwise enacted.

Vested Interests.—In the case of property held in trust for a minor who has an *immediate* vested interest, exemption or abatement may be allowed if the total income of the minor falls within the requisite limits (p. 332).

Vested interests payable in the future fall within the class of contingent interests (*post*).

Contingent Interests.—Where there is a contingent interest the total income may be calculated for exemption or abatement, but the relief to be granted is confined to the actual expenditure on maintenance and education.

A claim is not, as formerly, admitted on attainment of majority, in respect of any surplus and accumulated income, and it is opposed even though the Revenue had previously promised that the claim would be allowed, but in the latter case the matter should be persistently pressed.

If the income alone is immediately vested in the minor, and the capital is contingent, the income is taken as belonging to the minor.

In cases where the allowance of a claim in respect of education and maintenance has been postponed by the Revenue, until the attainment of the majority, the claim is admitted.

Foreign Possessions.—In *Drummond* v. *Collins*, [1915] reversed in C.A. — 114 L.T. 963

(*a*) ~~140 L. T. 156.~~

H. L. (*p*), a foreigner, resident abroad, left his foreign property by will to trustees upon trust for the benefit of his deceased son's children, who were minors, for life and remainder to their issue. There was a provision that the income of the respective shares should be accumulated by the trustees and added to the capital until each child should attain the age of twenty-five, when such child was to become entitled to a portion of the accumulated fund. The trustees were empowered under the will to make such provision as they thought necessary or advisable for the education and maintenance of the children.

The trustees remitted to the mother of the children, who was their guardian and resident with them in England, from time to time, sums for maintenance and education.

It was held that such sums were assessable under Case 5 of Schedule D (p. 203) as "foreign possessions."

The MASTER OF THE ROLLS pointed out in the Court of Appeal that each grand-child has the following contingent interests:—

(1) If he attains twenty-five he will be entitled to a vested life interest in one-half of the income of his proportionate share, including accumulations up to that date.

(2) If he attains thirty-five he will be entitled to a vested life interest in the remaining half of the income of his proportionate share, augmented by accumulations.

(3) He will also be entitled, before attaining twenty-five, to such income as the trustees in the honest exercise of their discretion think necessary or advisable for his suitable maintenance and education.

LORD LOREBURN refused to accept the contentions, (*a*) that the payments were voluntary, (*b*) that voluntary payments could never be charged, and (*c*) that the mother could not be charged as she had no control of the foreign *property* under sec. 41 of the 1842 Act (p. 217). As regards (*c*) it was held that the mother had charge of the *income*, which fact was sufficient.

(*p*) A. C. 1011; 59 S. J. 577; 84 L. J. K. B. 1690; 31 T. L. R. 482; 6 Tax Cas. 525.

Earned Income of Beneficiaries.—(See *Fry* v. *Shiel's Trustees* (1914), at p. 341.)

MORTGAGE COMPANIES.

See FINANCIAL COMPANIES, p. 193.

MUNICIPAL PROFITS.

See INTEREST, p. 256.
See WATERWORKS, p. 294.
See GASWORKS, p. 235.
See CEMETERIES, p. 146.
See SLAUGHTER-HOUSES, p. 294.

Retention of Tax.—An important case affecting Municipal Corporations was that of *Sugden* v. *Leeds Corporation*, [1913] H. L. (*q*). The Corporation carried on several undertakings, such as waterworks and gasworks, and the payment of interest on loans raised in respect of an individual concern was charged *primâ facie* on the income of that concern and the City Fund. The Corporation also had undertakings, in the capacity of an Urban Sanitary Authority, and in this class the payment of interest was charged on the income of the particular undertaking and the Consolidated Fund.

Assessments aggregating about £270,000 were made on the profits and rents of the various undertakings and hereditaments. The total interest paid amounted to about £285,000, and the Corporation deducted tax when paying that interest. The Corporation agreed that tax should not be retained by them on £15,000 but paid over to the Crown as not being paid *out of profits or gains brought into charge*, but the Crown contended that such an arrangement was insufficient, as the undertakings charged on the City Fund should be kept distinct from the undertakings charged on the Consolidated Fund, and the latter undertakings showed a deficiency of income of about £78,000 to meet the interest chargeable on

(*q*) 108 L. T. 578; 77 J. P. 225; 57 Sol. Jo. 425; 29 T. L. R. 402; 11 L. G. R. 662; 6 Tax Cas. 211.

those undertakings and the Consolidated Fund. Though the latter fund was chargeable as well as the undertakings, a rate was not struck, but an advance of about £78,000 was made from the City Fund. The Crown urged that the sum of £78,000 was not paid out of profits brought into charge, and that therefore under sec. 24 (3) of the Customs and Inland Revenue Act, 1888, the Corporation should account to the Revenue for the tax deducted on the £78,000.

It was held that the Corporation must account to the Crown for the portion of the interest paid in respect of loans raised for its Consolidated Fund undertakings, which is not met by the profits of those undertakings.

The LORD CHANCELLOR stated that the question of what would be the case if there were default in payment of interest, and a question of ranking occurred, was one which the Court was not called upon to determine, and that—

> "In the meantime and pending that event I think that no other income than the profits of the several undertakings and properties is operatively and effectively charged with payment of the interest on the various loans."

His Lordship defined the words "not payable out of" in sec. 24 (3) of the Customs and Inland Revenue Act, 1888, as meaning "not legally payable out of," that is which cannot *lawfully* be paid out of the "taxed fund." If the interest or the annuities were in fact, but against the law, paid out of the "taxed fund," then, though the tax should be deducted from the creditor, it could not be retained by the debtor.

Where interest is legally payable out of either "taxed" or "untaxed" funds, the manner in which the payments have been treated for book-keeping purposes is immaterial, as the payments will be taken as being made out of the "taxed" fund so far as the latter is sufficient.

LORD ATKINSON agreed that the company could not retain tax on the £78,000, as it was not legally payable out of the particular fund out of which it had in fact been paid. The Corporation had not power to devote the surplus from their

municipal undertakings to meet the deficit on their sanitary undertakings.

His Lordship said that the right of retention depended upon affirmative answers being given to both the following questions:—

(1) Have the interest and the annuities been, in fact, paid, or must they in the circumstances of the case be taken to have been, in fact, paid out of profits or gains brought into charge, *i.e.* out of the so-called "taxed fund"?

(2) Was it lawful to pay them out of the fund?

Set-off.—In practice the following conditions apply to the setting of profits of undertakings against the interest of the fund to which they belong:—

(1) The profits set off are calculated on the actual profits of the year of assessment as adjusted for Income Tax purposes.

(2) The balance of the said profits, after deducting all statutory obligations, including sinking fund contributions and also ground rents and other annual payments which are subject to deduction of tax, may be set off against the interest paid out of the fund to which the undertaking belongs. It is immaterial if the profits have been specifically appropriated to the relief of the rates or not, but provided the Corporation is *legally* entitled to so appropriate the profits.

(3) In ascertaining the profit to be set off, and in disallowing the amount of contributions to the sinking fund, the allowance of depreciation or of renewals in lieu thereof in arriving at the liability to Income Tax, has to be taken into account as explained in the following example:—

(*a*) Profit of the year		£12,000
Depreciation allowed		4,000
Net profit		8,000
Sinking fund	£2000	
Interest, ground rent, etc.	1000	

The set-off would be £7000, as the £1000 for interest, etc.,

is all that is deductible from the profits, as the depreciation covers the sinking fund contribution.

If the sinking fund contribution had exceeded the depreciation allowance, the set-off would be reduced by the amount of such excess.

(*b*) In the case of Waterworks and Gasworks, no depreciation is allowed, renewals being granted in lieu thereof.

Profit of the year		£12,000
Sinking fund contribution	£5,000	
Less renewals of plant and machinery debited in ascertaining profits . .	500	
	4,500	
Interest, ground rent, etc.	1,000	
		5,500
Amount set-off		£6,500

In *re Birmingham Corporation* (1875) (*r*), the Corporation was assessed for profits of Market Hall, fish market, vaults and meat market, and it was held to be inadmissible to set off against profits on those concerns, losses sustained on baths, etc.

In *A. G.* v. *Scott* (1873) (*s*), the Corporation of the City of London was held to be liable to assessment on the profits of market tolls, and corn and fruit metages, brokers' rents, mayor's court fees, etc., without reference to the purposes to which they were applied, and that the proper principle upon which the assessment should be made is to take each item or head of income separately, and to assess the income tax upon the net produce of such item, after deducting from the gross receipts the expenses incurred in earning and collecting the same.

Set-off for Waterworks.—In *Wakefield Rural District Council* v. *Hall*, [1912] C. A. (*t*), the appellant supplied water

(*r*) 1 Tax Cas. 26.
(*s*) 28 L. T. 302 ; 21 W. R. 265 ; 1 Tax Cas. 55.
(*t*) 2 K. B. 265 ; 3 K. B. 328 ; 81 L. J. K. B. 1201 ; 107 L. T. 138 ; 28 T. L. R. 589 ; 76 J. P. 437 ; 10 L. G. R. 1002 ; 6 Tax Cas. 181.

to several contributory parishes in their district. Separate accounts were legally required to be kept for each parish, and there was no power in the Council to divert the profits of one parish for the benefit of another parish. It was intended to make the receipts from water rents (which were only paid by consumers) cover, as nearly as possible, the cost, thus no profits were sought, but a deficiency was met by a special rate upon all ratepayers in the particular parish, any surplus being carried forward to meet the following year's expense.

In four parishes profits were made, and in three losses, and it was held that the supply to each of the parishes was a separate concern and that the Corporation was assessable in respect of such profits, and that it was not permissible to set off the said losses against the profits. It was held, further, that waterworks do not come within sec. 101 of the 1842 Act (see p. 59), which allows a loss on an undertaking assessable under Schedule D to be set off against the profits of another undertaking under Schedule D and in the same ownership.

An important point is now pending in connexion with waterworks and other similar concerns, in the carrying on of which profits are not sought, and if the matter is decided in favour of the Crown it will result in the taxation of many Municipal Concerns run at a loss. (See Waterworks, p. 294, where the question is dealt with in detail.)

See also *Mullingar Rural District Council* v. *Rowles*, [1913](*u*), in which the Council were restricted to supplying water in their district, and the profit made was held to be assessable.

In *Glasgow Corporation Water Commissioners* v. *Inland Revenue* (1875) (*x*) it was held that a compulsory rate did not give assessable profit, but in *Miller* v. *Glasgow Water Commissioners* (1886) (*y*) the Corporation supplied water outside the limits of compulsory supply, and also for trade purposes within those limits, and were held to be assessable thereon.

(*u*) 2 I. R. 44; 6 Tax Cas. 85.
(*x*) 12 Sc. L. R. 466; 2 R. 708; 1 Tax Cas. 28.
(*y*) 13 R. 489; 23 Sc. L. R. 285; 2 Tax Cas. 131.

See also *Dublin Corporation* v. *McAdam* (1887) (*z*), and *Allan* v. *Hamilton Waterworks Commissioners* (1887) (*a*).

In *Harris* v. *Corporation of Irvine*, [1900] (*b*) the Corporation supplied water to other authorities in return for annual sums raised by compulsory assessments within the areas of the latter. The waterworks produced a surplus, which was partly carried over and partly applied to a sinking fund for redemption of debt. The surplus attributable to the above sums was held to be assessable profit.

Interest. Municipal Corporations are chargeable on interest paid on loans, the assessment being based on the amounts payable in the year of assessment. On paying the interest, tax is deducted and retained by the Corporation, sec. 102 of the 1842 Act, p. 56. (See p. 256 as to Deduction.)

In *Mayor, etc., of Gateshead* v. *Lumsden*, [1914] C. A. (*c*), the Corporation paved certain streets, and from time to time apportioned the expenses thereof among the owners of premises having frontages thereto. The defendant was allowed time for payment of his apportionment, interest being charged at the rate of 5 per cent. per annum, and he paid sums at irregular intervals which the Corporation credited in the first place to interest due and in the second place to payment of principal. There was no evidence that the Corporation made a practice of allowing the expenses to remain unpaid as a means of investing capital. Upon paying the final amount due for principal and interest, the defendant claimed to deduct tax upon the amount due for interest as "yearly interest of money" under sec. 40 of the 1853 Act.

It was held that the interest was not within the said words, and that therefore deduction of tax could not be made.

Sec. 102 (*ante*) was held in *Aberdeen Commissioners of Supply* v. *Russell* (1890) (*d*) to apply to interest paid on loans

(*z*) 20 L. R. Ir. 497; 36 W. R. 98; 2 Tax Cas. 387.
(*a*) 14 R. 485; 24 Sc. L. R. 360; 51 J. P. 727; 2 Tax Cas. 194.
(*b*) 2 F. 1080; 37 Sc. L. R. 799; 4 Tax Cas. 221.
(*c*) 2 K. B. 883.
(*d*) 27 Sc. L. R. 759; 54 J. P. 825; 2 Tax Cas. 643.

raised on the security of the rates, for the erection of municipal buildings. (See p. 262.)

Retention.—In *A.-G.* v. *London County Council*, [1907] H. L. (*e*), the Council claimed to retain tax deducted on payment of loan interest, equivalent to tax paid under Schedule A on property owned and occupied by them and which was part security for the loan, but it was held that the council could only retain tax on interest paid out of taxed sources, and could not make a set-off in respect of tax upon unproductive property.

See also *London County Council* v. *A.-G.*, [1901] H. L. (*f*).

Sinking Fund.—It was held in *Mersey Docks* v. *Lucas* (1883), H. L. (*g*), that a surplus arising from dock dues which was applied to a sinking fund for extinguishing debts was assessable, the destination of a profit being irrelevant. This case was followed in *City of Dublin Steam Packet Co.* v. *O'Brien* (1912) (*x*).

MUTUAL.

See INSURANCE, p. 252, CLUB, p. 148, and CO-OPERATIVE STORES, p. 155.

NATIONAL HEALTH INSURANCE CONTRIBUTIONS.

A deduction is allowed in respect of employer's State Insurance contributions.

NAVIGATIONS.

Inland Navigations are assessable under No. III. of Schedule A on the profits of the preceding year.

See *Humber Conservancy Board* v. *Bater*, [1914] (*h*). The Board received income from various sources and admitted

(*e*) A. C. 131; 76 L. J. K. B. 454; 96 L. T. 481; 71 J. P. 217; 23 T. L. R. 390; 5 L. G. R. 465; 5 Tax Cas. 242.

(*f*) A. C. 26; 70 L. J. K. B. 77; 83 L. T. 605; 49 W. R. 686; 4 Tax Cas. 265.

(*g*) 8 App. Cas. 891; 53 L. J. Q. B. 4; 49 L. T. 781; 32 W. R. 34; 2 Tax Cas. 25.

(*x*) 6 Tax Cas. 101.

(*h*) 3 K. B. 449; 137 L. T. 215; 6 Tax Cas. 555.

liability except as to £4300 received as contributions from railway companies, etc., and it was held that the contributions were taxable under either No. III. of Schedule A as profits of "inland navigations," or under Schedule D as "other annual profits and gains" in the 6th Case.

Negotiation Fees.

In *Humphrey* v. *Peare* (1913)(*i*), an Agent was assessed in respect of fees payable for successful negotiations of sales of Irish Estates, and claimed that only a portion of the fees is payment for work done as negotiator, and that the balance is compensation for loss of employment as agent to the Estates sold and should be excluded from the assessment. It was held that the "money was paid as commission incident to services performed" in carrying out a contract for sale, and was therefore part of the annual profits arising from the vocation as agent and the whole was therefore assessable.

Nursery Gardens.

See p. 270.

Paper Profits.

When shares are given for services rendered, the value of such shares is generally problematic, and in practice the assessment is held over for three years on the condition that, if the shares are sold in the interim, tax is paid thereon, but that if they are unsold at the expiration of the three years, the Commissioners will place a value thereon.

In the case of profits comprising unrealized shares or options in other Companies, and the Company holding such shares retains them but enters them in the accounts at a lower value than the market value, the assessment may be based on the accounts, but an undertaking has to be given to account to the Revenue for:—

(1) Further profit made when the shares are disposed of,

(*i*) 6 Tax Cas. 201.

either in the course of business, or in winding up or reconstruction, and

(2) Any amount due on the shares being distributed amongst shareholders as dividends. (See *post.*)

An alternative method of assessment is for tax to be paid on the basis of actual receipts and expenses, the Company undertaking to pay tax on any profit from sale of the shares year by year up to three years from the time when they were first brought into account. At the expiration of the three years the remaining shares are valued by the Commissioners, and any balance due over the period is then payable.

(3) If no assessment on the market value has been made on shares which are subsequently distributed as dividends, the company is assessable on the average quoted selling price shown by the Stock Exchange lists for the month after payment of such dividend. In the event of there being no market quotation the Commissioners value the shares at the end of the year of assessment.

PARLIAMENTARY EXPENSES.

In *A. G. Moore & Co.* v. *Hare* (1914) (*a*), the company joined with other traders in promoting two Bills in Parliament for the construction of a railway line to avoid the unsatisfactory facilities given by a railway company. The latter ultimately agreed to give the desired facilities and the Bills were dropped. It was held that the expenses formed capital expenditure and were, therefore, not allowable. The LORD PRESIDENT accepted a dictum in *Vallambrosa Rubber Co.* v. *Farmer* (1910), "that capital expenditure is a thing that is going to be spent once and for all, and income expenditure is a thing that is going to recur every year," but his Lordship stated the test was only a rough-and-ready one. In dissenting, LORD JOHNSTON mentioned that the expenses were not capital in the ordinary commercial sense.

(*a*) S. C. 91; 6 Tax Cas. 572.

PATENTS.

A deduction is not allowed for patent royalties, but tax is deductible by the payer at the rate of tax chargeable during the period through which the royalty was accruing due. Sec. 25 (1) of the Finance Act, 1907.

The necessary expenses of working a patent are allowed to the owner receiving royalties.

PENSIONS.

See SUPERANNUATION, p. 291.

PIT SINKING.

See MINES, p. 270.

POWER SUPPLY.

It was decided in *Armitage* v. *Moore*, [1900] (*k*), that the profits of supplying steam power were assessable. The firm traded as worsted spinners and also supplied power. On a deed of assignment being executed the trustee discontinued the spinning but continued the power supply for the benefit of the creditors.

PRELIMINARY EXPENSES.

A deduction is not allowable for preliminary expenses on the formation of a Company, except for new books.

QUARRIES.

Quarries of stone, slate, limestone, and chalk are assessable under No. III. of Schedule A on the profits of the preceding year.

See *Jones* v. *Cwmmorthin Slate Co.* (1879), C. A. (*l*), in which it was held that a quarry does not become a mine (see p. 270) because the slate was obtained from underground

(*k*) 2 Q. B. 363; 69 L. J. Q. B. 614; 82 L. T. 618; 4 Tax Cas. 199.
(*l*) 5 Ex. D. 93; 49 L. J. Ex. 110; 41 L. T. 575; 44 J. P. 168; 28 W. R. 237; 1 Tax Cas. 267.

working, and that the tax is not imposed upon the method of work but upon the article worked.

RAILWAYS.

Railways are assessable by the Special Commissioners under No. III. of Schedule A on the profits of the preceding year.

See DEPRECIATION, p. 168, and PAYMENT at p. 377.

REMOVAL EXPENSES.

It was held in *Granite Supply Association, Ltd.* v. *Kitton*, [1905] (*m*) that a Company removing their business to larger premises and defraying the cost out of Revenue is not entitled to deduct the expenses of carting granite from the old yard to the new, nor of taking down and re-erecting cranes.

In practice however a deduction is allowed for—

(*a*) The expenses involved in removal of stock whether such removal is forced or voluntary;

(*b*) Other removal expenses where the removal is forced, but not where it is voluntarily undertaken for improvement of business.

RENEWALS.

See p. 160.

In *Hall* v. *King's Lynn Harbour Moorings Commissioners* (1875) (*n*), a deduction was admitted in respect of repayment of money borrowed to cover renewal of works.

REPAIRS.

Repairs of premises occupied for the purpose of the trade are allowed, and this now includes "Tied houses" (see p. 111), Rule 3 to Case 1, Schedule D.

RESERVES.

Payments to Reserves are not deductible. See p. 299.

(*m*) 43 Sc. L. R. 65; 8 F. 55; 5 Tax Cas. 168.
(*n*) 1 Tax Cas. 23.

RETIRING GRATUITY.

A gratuity is paid by the Incorporated Council of Law Reporting to reporters on retirement, and it was held in *W. Smith* v. *Incorporated Council of Law Reporting* (1914) (*o*), that the gratuity formed a deductible allowance in arriving at the assessable profits of the Council. The sum in question was £1500, and MR. JUSTICE SCRUTTON held himself bound by the facts found by the Commissioners, and he was of the opinion that the gratuity would affect the salary paid.

ROYALTIES.

No deduction is allowed for royalties, as tax is deductible from the payments. If the assessable profits do not reach the amount of royalties payable in the current year, the assessment is made to cover royalties at the unearned rate (p. 338). Sec. 25 of the Finance Act, 1907, also makes this provision for patent royalties. See *Lanston Monotype Co.* v. *Anderson* (1911) (*p*), where it was held that when there were no royalties payable in the year of assessment the 1907 Act did not operate, although payments were made in the years comprising the average, as the adding back of royalties and deduction of tax by the payer presumes an ability to recover by deduction what has been paid as honorary collector to the Crown.

SEWERS.

Sewers are assessable under General Rule 1 of Schedule A on the "Annual Value" and not under No. III. of Schedule A. (See Waterworks, p. 294.)

SECURITIES.

See pp. 201, 355.

SHARES.

See p. 285.

(*o*) 3 K. B. 674; 83 L. J. K. B. 381; 30 T. L. R. 588; 6 Tax Cas. 477.
(*p*) 2 K. B. 1019.

SHIPS.

See DEPRECIATION, p. 172.

SUBSCRIPTIONS.

Trade Protection Associations.—In *Guest Keen & Nettlefolds, Ltd.* v. *Fowler*, [1910] (*p*) the Company was a member of the Steel Hoop Manufacturers' Association, which was formed mainly for the purpose of keeping up prices and thus reducing competition and increasing profits on which tax is paid. The orders received by the members were divided in fixed proportions, and any member who invoiced more than his proportion paid 10*s*. per ton on the excess to a Pool Account, which is distributed amongst members who have not invoiced their full proportion.

The Company claimed to deduct the excess of the net payments to the Association (including a share of administrative expenses) over the receipts therefrom, and it was held that such a deduction was admissible.

BRAY, J., ruled that the expense was "wholly and exclusively" laid out for the purposes of the trade, and this decision marks a departure from the hitherto existing, strained Crown advocacy of the interpretation of the law, by allowing deduction of a sum which was *not necessary to the carrying on of the business*, but which resulted in increased profits on which tax was paid.

See *Rhymney Iron Co.* v. *Fowler*, at p. 272, which disallowed subscriptions for indemnification against strikes, and *Lochgelly Iron Co., Ltd.* v. *Crawford* (1913), (p. 272).

The Practice—Employers' Contributions.—In practice, subscriptions, entrance fees, and levies paid by members of Trade Protection Associations may be deducted as a trade expense and the following conditions apply :—

(1) The Association pays tax on the balance of income

(*p*) 1 K. B. 713; 79 L. J. K. B. 563; 102 L. T. 361; 26 T. L. R. 337; 5 Tax Cas. 511.

over expenditure on the average of three years, and expenditure comprises all administrative expenses, all payments to members from compensation for strikes and grants or payments (other than loans) and legal charges in defending test cases on behalf of members, including contributions to other organizations which have entered into similar arrangements as these.

(2) The recipients of compensation in labour disputes, and of any other kind of grant or payment, credit their trading accounts therewith.

(3) The existing and future accumulated funds to be regarded as taxed income in the event of the Association being wound up and funds distributed.

Deduction is also allowed for :—

(*a*) Subscriptions to a master's federation or to a Company to insure against, or to provide compensation for, accidents to work-people.

(*b*) Payments made for compensation to workmen for accidents, or to a miners' permanent fund or to a men's sick fund, under agreement with the employees, in order to relieve the trader from statutory damages under the Employers' Liability Act.

Production of Accounts of Association.—In *Grahamston Iron Co.* v. *Crawford* (1915), it was laid down that the accounts of the association could be required by the surveyor as a condition of deduction.

SUPERANNUATION FUNDS.

Deductions are allowed, in practice, in respect of employees' compulsory contributions to Superannuation Funds where the contribution only secures a pension.

Where, in addition to a pension, a right is secured to a contingent return of subscriptions, the deduction is allowable, but an undertaking has to be given to pay tax on the repaid contributions representing deductions from salaries exceeding £150 per annum. The rate of tax is the lowest in force at

the time of payment. Deduction is not admitted when the scheme provides for an eventual return of subscriptions.

Pensions.—Pensions to workmen are deductible unless paid out of a Superannuation Fund.

The subscriptions of employers to Superannuation Funds are deductible if:

(1) The employer has no such controlling power as would enable him to take full possession of the fund, and

(2) The employee will benefit to the full amount of his own and his employer's contributions, apart from exceptional circumstances, such as dismissal for fraud.

See SCHEDULE E, p. 349.

THEFT.

A deduction is allowed in respect of employee's theft.

TIED HOUSES.

See BREWING, p. 101.

TRAMWAYS.

Tramways are assessable under Schedule D, not under No. III. of Schedule A.

Tramway Companies and other Tramway proprietors occasionally lease their lines, and a deduction is allowed, by repayment, for the management expenses of the lessor.

See DEPRECIATION, pp. 177, 178.

A question arises in the case of a leased tramway when there is an element of doubt as to who will be liable to the maintenance and restoration, within sec. 12 of the Customs and Inland Revenue Act, 1878, but the question is one for the determination of the Commissioners, and if an allowance is made to the lessor, and it subsequently transpires that the lessor is not liable, repayment of the allowance cannot be claimed by the Revenue, and, conversely, if the allowance is refused by the Commissioners and it transpires that the lessor is liable, repayment cannot be obtained by the lessor.

TOLLS.

Tolls are assessable under No. III. of Schedule A on the profits of the preceding year.

TRADE PROTECTION SUBSCRIPTIONS.

See SUBSCRIPTIONS, p. 290.

TRADE UNION.

See FRIENDLY SOCIETY, p. 231.

TRAVELLING EXPENSES.

A deduction is not allowed for travelling expenses between the residence of the person assessed and his place of business. (See Schedule E, p. 350.)

TREASURY BILLS.

Discounts on Treasury Bills are not assessable. Case 3 of Schedule D has been advanced as covering the assessment in its reference to "all discounts, and on all interest of money not being annual interest," but it first charges "the profits on all securities bearing interest payable out of the public revenue (except securities before directed to be charged under the Rules of Schedule C)." Treasury Bills are within Schedule C which, by the charging sec. 2 of the 1853 Act, only charges *interest*. Sec. 97 of the 1842 Act enacts that any *interest* on public securities shall be charged under Schedule C. Case 3 excepts the *profits*, not interest alone. See pp. 63, 188.

UNDERWRITER.

The assessment of underwriters in respect of the part of underwritten shares required to be taken up by him, is restricted to the proportion of commission, in cash or shares, relating to shares of which he has been relieved by public subscriptions. When the market value of shares taken up personally by an underwriter falls below the cost to him, the difference forms a deductible allowance.

UNEXECUTED CONTRACTS.

See CAPITAL EXPENDITURE, p. 134.

UNEXPIRED RISKS AND UNEARNED PREMIUMS.

See INSURANCE, p. 250.

VICTUALLER.

See ANNUAL VALUE, p. 92.

WAR.

Wages paid to employees who have joined the colours and to dependents are not opposed as deductions by Surveyors.

WASTING ASSETS.

See CAPITAL EXPENDITURE, p. 131.

WATERWORKS.

Waterworks are assessable under No. III. of Schedule A on the profits of the preceding year.

See also MUNICIPAL, p. 278.

The Crown has taken an important position with regard to the assessment of waterworks which are not run with a view to profit, and if the Crown are able to sustain their view, the effect on Municipal concerns will be momentous.

In the actual case, the waterworks was a charity, but the element of charity is quite irrelevant to the question at issue, and Municipal concerns in which the receipts are so adjusted as to give as nearly as possible the actual expenditure, are equally affected.

In *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Benstead*, [1907] H. L. (*q*), a sewer was held to be assessable under General Rule 1 of Schedule A on the *annual value*, and the appellant's contention that a sewer fell under

(*q*) A. C. 264; 76 L. J. K. B. 876; 97 L. T. 141; 71 J. P. 425; 23 T. L. R. 621; 5 L. G. R. 865; 5 Tax Cas. 230.

No. III. of Schedule A as a "drain" (see p. 55), and therefore assessable on the *profits*, was not upheld. Dicta was delivered to the effect that No. III. of Schedule A referred solely to trading concerns, and in *Harris* v. *Edinburgh Corporation*, [1907] (*r*), the Corporation was unsuccessful in attempting to bring a public slaughter-house within No. III. under the sweeping words "concerns of the like nature" (see p. 55). The revenue derived from the slaughter-houses consisted of such rents and dues as would meet the necessary expenses and an annuity of £1000 payable to the Corporation in respect of the cost of erection. The rents and dues were by law to be so adjusted as not to produce an amount in excess of the expenses and annuity.

LORD MCLAREN delivered the following dicta:—

> "Now, if I am right in my conclusion that these slaughter-houses are not carried on with a view to profit, and that no profit in any true sense is made, the provisions of No. III., Rule 3, are inapplicable. But it does not follow that the subject is to escape taxation, because the only result of excluding No. III. and all its rules is to put the subject into the category of property in the natural occupation of its owner who is not using it as a profit-yielding investment, and it is thus chargeable according to the General Rule No. 1 of Schedule A upon the rent at which it is worth to be let by the year.
>
> "This is the principle of the decision of Mr. Justice Walton in the case of the Ystradyfodwg Sewage Board (1906), 1 K. B. 308, where the learned judge considered it to be perfectly clear that the mode of assessment prescribed by No. III., Rule 3 of Schedule A could not be applied to undertakings that were not established or carried on with a view to profit."

It will be observed that in the sewerage and slaughter-house cases neither of the subject-matters of assessment was *specifically mentioned* in No. III. of Schedule A, and it was sought to bring them as follows:—

(1) Sewers within "drains."

(2) Slaughter-houses as "other concerns of the like nature."

(*r*) Sess. Cas. 1233; 44 Sc. L. R. 873; 15 Sc. L. T. R. 233; 5 Tax Cas. 271.

There is thus a vital distinction between waterworks or gasworks, which are specifically mentioned in No. III. of Schedule A, and sewers and slaughter-houses which are not, and mere dicta on a distinguishable point cannot be applied to a special provision of the law, and any injustice which may result from the different methods of assessment must be attributable to the state of the law. Mere dicta cannot override a specific provision of the law, and the question as to whether a concern mentioned in No. III. of Schedule A should be transferred from No. III. to No. I. when such concern is not run for profit, was not before the Courts in either case.

There is no material distinction in trading between such a waterworks not carried on for profit, and one run solely as a commercial undertaking, the only difference being that the rates charged for the water are lower in the former than the latter. There are vendors and vendees equally in either case. Moreover, waterworks are expressly assessed under No. III. of Schedule A, and No. I. of Schedule A *specifically* provides that it does not apply to concerns in No. III. (p. 55), therefore, as it cannot be disputed that a charitable or municipal undertaking is a "waterworks," No. I. is legally prohibited.

The Crown further contends that there cannot be profits as the concerns do not "trade," but it was laid down in *I. R.* v. *Incorporated Council of Law Reporting* (1888) (*a*), that "trading" does not necessitate making or seeking profits.

WEAR AND TEAR.

See DEPRECIATION, p. 159.

(*a*) 22 Q. B. D. 291; 3 Tax Cas. 105.

CHAPTER IV

PREPARATION OF RETURNS AND ACCOUNTS

Production of Accounts.—The *sole* authority to require production of accounts lies with the Commissioners, but the Surveyor of Taxes is statutorily empowered to require an opportunity of inspection of accounts furnished to the Commissioners and of taking copies thereof. The demand of a Surveyor of Taxes for accounts can only be supported on the authority, expressed or implied, of the Commissioners, but a peremptory refusal to supply accounts may obviously prejudice a case, and would, in all probability, result in an inflated estimated assessment.

Law Involved.—The following reply of the Board of Inland Revenue to the inquiry of an Accountant who was opposing production of a Balance Sheet, shows the limited scope of the powers of the Surveyor of Taxes. The Accountant had written a prior letter on 27th October, 1908, and had been informed by the Board that the application of a Surveyor of Taxes for accounts was of the nature of a request, not a statutory obligation.

> "I am directed by the Board of Inland Revenue to point out that in your letter of the 27th ult., you referred to a request made by the surveyor of taxes for balance-sheets to be produced, and that the Board's reply of the 2nd inst. related only to surveyors of taxes. The commissioners of taxes, through their clerk, have statutory powers (5 & 6 Vict. c. 34, s. 120) to demand the production of 'all particulars required by them' for the purpose of determining an appeal against an income tax assessment."

Sec. 52 of the 1842 Act provides that :—

> Every person chargeable under this Act shall, when required so to do, whether by any general or particular notice given in pursuance of this Act, within the period to be mentioned in such notice as aforesaid, prepare and deliver . . . a true and correct statement in writing, in such form as this Act requires (*i.e.* by sec. 190, *post*), and signed by the person delivering the same, containing the annual value of all lands and tenements in his occupation, whether the same be situate in one or more parish or parishes, and the amount of the profits or gains arising to such person from all and every the sources chargeable under this Act, according to the respective schedules thereof, which amount shall be estimated for the period and according to the respective rules contained in the respective schedules of this Act; to which statement shall be added a declaration, that the same is estimated on all the sources contained in the said several schedules, describing the same, after setting against or deducting from such profits or gains such sums, and no other, as are allowed by this Act.

Sec. 190 of the 1842 Act requires :—

> The amount of the balance of the profits thereof, upon a fair and just average of three years, or for such shorter period as the concern has been carried on.

The above provisions do not require accounts, but merely a return of the amount of the net assessable profits, such, *e.g.* as on Form 11 (p. 310).

Balance Sheets.—The above sections restrict the preliminary requirements of the Revenue to a return, in contradistinction to accounts, but accounts are in practice supplied annually to Surveyors of Taxes, as otherwise an estimated assessment would be made, leaving the adjustment thereof to be made on appeal. It is provided by sec. 120 of the 1842 Act (*post*) that "upon appeal" statements may be required, but controversy exists on the question of the necessity of production of Balance Sheets, requests for which originate annually from Surveyors of Taxes and are strenuously opposed by the professional representatives of many taxpayers, on the ground of disclosure of the exact financial standing of a taxpayer to the District Commissioners who may be rivals in

business, and it is thought that a Commissioner who may, *e.g.* be a Creditor of the particular taxpayer, would, on inspecting the Balance Sheet, note the financial position, and if this were unfavourable, press for payment of his debt.

The question is not so serious in practice as from a theoretical point of view, as the Commissioners almost invariably do not see a Balance Sheet unless a dispute exists and the matter is taken to appeal, but admittedly the possibility of the Commissioners' inspection is an existent factor. In some Districts the Commissioners do not require Balance Sheets, acknowledging the fact that their production is both unnecessary and objectionable, but in many districts the Commissioners support the Surveyor of Taxes' demand and a refusal to produce is synonymous with loss of Depreciation allowance. The Surveyor of Taxes' reasons for requiring a Balance Sheet are *inter alia*—

(1) Verification of the Machinery and Plant account for Depreciation purposes, such, *e.g.* as in respect of "additions."

(2) Increases in reserves, as payments thereto are not an allowable deduction.

(3) State of loan accounts as regards payments of interest, which also do not form a deductible allowance.

An offer has been made, and accepted in some Districts, that an extract of the Machinery and Plant account, certified by a qualified Accountant, is sufficient for all reasonable requirements of the Revenue, and if this is extended to cover Reserves and Loans there is no legitimate objection to non-production being allowed.

In one District the difficulty of disclosure of financial standing has been overcome by the Commissioners accepting Balance Sheets with Debtors, Creditors, and Totals omitted. The Balance Sheet thus produced gives all requisite particulars of machinery and plant, etc., and yet avoids the possibility of the Commissioners ascertaining the financial position. Moreover, a request that the Balance Sheet would not be shown to the Commissioners has been agreed to, and no material objection

can of course be raised as regards disclosure to Surveyors of Taxes, who are in no way "local" individuals and who are extensively moved from one Survey to another.

It may be urged that the amended Balance Sheet in question would not remove the difficulty, as the Commissioners could readily find the excess of debts owing over debts due, by totalling, but in practice this objection is one which is absolutely negligible, as, although the Commissioners would be able to do that, such a possibility may be ignored. The omission of the Capital account would remove the difficulty.

A point which needs careful consideration in Districts where the production of Balance Sheets is insisted upon, is that of the effect of refusal on the Depreciation allowance. In those Districts, Depreciation is not allowed unless Balance Sheets are rendered, and, from a point of view of discretion, the loss of Depreciation overbalances the disadvantages attending production of Balance Sheets. In one instance an Accountant ignored the Commissioners' precept requiring a Balance Sheet, and the result was that the client suffered monetary loss through non-allowance of Depreciation, whereas the client would have readily agreed to production had he known that the consequences of refusal would be so financially detrimental to him.

Legal Right to Balance Sheets.—Sec. 120 of the 1842 Act authorizes the Commissioners to require details, and it has been urged and generally accepted that the Section covers Balance Sheets, by empowering the Commissioners to demand "all the particulars required by them."

The Section reads:

> upon receiving notice of appeal against any assessment made as last aforesaid . . . the said commissioners shall direct their precept to the person appealing to return to them, within the time limited therein, a schedule containing such particulars as the said commissioners shall demand, **under the Authority of this Act,** for their information, respecting
>
> the property of such person, or
>
> the trade, manufacture, adventure, or concern in the nature of trade, or

the profession, employment, or vocation respectively carried on or exercised by such person,

and the amount of the balance of his profits and gains, distinguishing the particular amounts derived from each separate source before mentioned, or respecting the particulars of the deductions from any of such profits or gains made in such statements or schedules,

and which the said commissioners are hereby empowered and required to demand, at their discretion, whenever the same shall appear to them necessary for the purposes mentioned in this Act, and so from time to time until a complete schedule, to the satisfaction of the said commissioners, **of all the particulars required by them,** shall be delivered.

The section further provides—

(*a*) In cases of refusal, for the imposition of a penalty not exceeding £20 and treble duty, and

(*b*) that the Surveyor of Taxes "shall have free access" to the "Schedule," and "shall take copies thereof" if he shall think necessary.

It would appear from a *primâ facie* consideration of sec. 120 that the Commissioners are, in fact, entitled to demand Balance Sheets and any other desired particulars, but a closer examination of the section tends to prove that the Commissioners' powers do not extend to Balance Sheets.

The Commissioners are first authorized to require a Schedule containing such particulars as they shall demand, "under the authority of this Act." This limitation refers to secs. 52 and 190 (*ante*), and merely covers a return of net profits. It may be contended that the words "under the authority of this Act" merely mean that the Commissioners are "authorized by this Act" to demand, etc., but this contention would assume the farcical construction that the section creates a superfluous authorization, as obviously the words of a section are in themselves *authority* without specifically enunciating the double authority, or, in other words, the equivalent of "the Commissioners are authorized to demand particulars, and they are authorized by this Act." The section says that the Commissioners shall direct "their precept to the

person appealing to return to them," and later imposes a penalty for non-compliance.

The words in question are therefore merely restrictive.

Sec. 120 then proceeds to authorize the Commissioners to require particulars of the deductions made by the taxpayer in the return (*ante*), and this confirms the contention that the former part of the section merely covers a schedule or return of the total net amount.

The section then continues that the Commissioners may continue to demand *at their discretion* the previously mentioned particulars "until a complete *schedule* of all the particulars required is furnished."

Now it is contended that the latter quoted words are wide and unqualified, and so they would appear to be from a surface observation, but there is an acknowledged principle of legal interpretation—*ejusdem generis*—that when you find sweeping words they must always be construed with reference to what has gone before; that the words must be read as meaning "all the particulars required of the same kind as those specified," *i.e.* by secs. 52, 120, and 190.

It will thus be seen that there is no authority for a demand for production of Balance Sheets, and that a certified extract of any account in dispute, such as Machinery and Plant, would be well within the requirements of the section.

Moreover, the restriction of required particulars to a "complete schedule" would point to the limitation of the requirements to extracts and answers, but the production of Trading and Profit and Loss accounts cannot, in equity, be reasonably questioned, as the Surveyor of Taxes cannot be expected to make an assessment without such an aid.

The insupportability of a legal demand for Balance Sheets being founded on sec. 120, is apparent when it is considered that if the contentions of the Crown are correct, the section need only have authorized the demand for "any particulars required," the remainder of the lengthy section being obviously superfluous.

Precepts.—The following official precept for accounts was first drawn up by the Board in 1914 :—

INCOME TAX—YEAR 191 –191 .

Parish of

Appeal No.

Assessment No.

To

With reference to your notice of Appeal against the Assessment of £ upon you for the above year, I am directed by the General Commissioners for the Division to give you notice that they require you to furnish copies of the Balance Sheets, Trading Accounts, and Profit and Loss Accounts of your business for each of the last years ending :—

(1) either on the date, preceding the 5th day of April, 191 , to which your accounts are usually made up, or
(2) on the said 5th of April,

showing, *inter alia* :—

(a) the value of the stock at the beginning and end of each year;
(b) the amount of Purchases and Sales of each year;
(c) particulars of the several deductions claimed from gross profits each year;
(d) particulars of the various assets and liabilities as at the beginning and end of each year.

These copies should be sent to the Surveyor of Taxes at as soon as they are ready, and not later than 191 .

If your accounts have not been prepared in such a manner, copies in the form in which they have been prepared should be sent, when you will be advised if further information is required.

All accounts tendered in evidence must be certified as correct, dated and signed by you, and the Commissioners may require them to be verified on oath.

If your business has been set up within three years, accounts should be furnished as from the date of its commencement.

The name of the Parish and the number of the Assessment should be quoted on any accounts or further communications.

It will facilitate a settlement if you will *call on* the Surveyor of Taxes with the accounts in support of your Appeal.

CLERK TO THE COMMISSIONERS OF INCOME TAX.

Dated 191 .

The form for employments, etc., requires the gross earnings and expenses.

PREPARATION OF ACCOUNTS.

See AVERAGE, p. 47.

A Trading and Profit and Loss Account should be supplied annually to the Surveyor of Taxes, who files all the past year's accounts, and is thus able to strike the average of three years, etc.

The accounts supplied should not be adjusted for Income Tax purposes, but should be the ordinary commercial accounts, with a reconciliation account adding back non-deductible allowances.

See REQUIREMENTS OF PRECEPT, *ante*.

Proper accounts are not always available, particularly in the case of retail traders. The best account that can be produced is considered, even though it is only on a cash basis, that is, it takes account solely of cash received and paid, ignoring actual amounts earned and due, but estimated assessments result, in many cases, from such accounts.

Where there has not been an annual stocktaking, and a 3 years' account with stock at beginning and end, can be furnished, this account should be produced.

Doctors and Solicitors.—A cash statement will be accepted in the case of doctors and solicitors.

First Accounts.—When accounts are made up for the first time, proper books not having been previously kept, the first year's account can settle the assessment, the business being placed on the footing of a new business, unless it appears that the profits of the previous years which would fall into the average, probably exceeded those of the year for which the accounts had been prepared.

The following example shows the working of an account for Income Tax purposes for the year of assessment 1915-16.

YEAR ENDING 31ST DECEMBER, 1914.

	£	s.	d.		£	s.	d.
To Stock @ 31st Dec., 1913	6,824	10	0	By Sales . . .	28,860	2	8
,, Purchases .	14,810	5	6	,, Discounts .	240	11	2
,, Rent, rates, and taxes .	976	10	2	,, Dividends .	125	0	0
,, Wages .	4,280	1	7	,, Stock @ 31st Dec., 1914 .	8,240	15	8
,, Partners salaries and drawings .	2,000	0	0				
,, Fire, lighting, &c. .	824	10	6				
,, Carriage .	155	11	2				
,, Insurance, Compensation, &c. .	247	6	4				
,, Advertising .	124	8	2				
,, Bad debts written-off .	552	8	7				
,, Depreciation of machinery and plant .	502	0	0				
,, Depreciation of fixtures .	44	0	0				
,, Bank charges	42	10	11				
,, Legal and accountancy charges .	68	2	4				
,, Discounts .	110	5	2				
,, Loan interest	450	0	0				
,, Profit .	5,453	19	1				
	£37,466	9	6		£37,466	9	6

The net Schedule A assessment on the works is £500, and the rent £360, therefore the rent is added back, and the net Schedule A allowed. (See ANNUAL VALUE, p. 92.)

Dividends, being already taxed by deduction at the source, do not form part of the receipts for Income Tax purposes.

The adjustments would be made as follows, round £'s being adopted in practice:

(1) Profits		£5454
(2) Rent		360
(3) Income Tax Schedules A and D		508
(4) Partners' salaries, and drawings		2000
(5) Depreciation of machinery and plant		502
(6) Depreciation of fixtures		44
(7) Loan Interest		450
	£	9318
(8) *Less* taxed dividends	125	
,, net Schedule A	500	
		625
		£8693

Item (3) is the amount of Income Tax included in "Rent, Rates, and Taxes."

Assuming that the profits of the years 1912 and 1913 have been similarly adjusted at £4280 and £5390 respectively, the assessment would be based as follows:—

Year to 31st December, 1912		£4,280
,, ,, ,, 1913		5,390
,, ,, ,, 1911		8,693
		3)18,363
		6,121 = average profit.
Less depreciation @ 5 per cent. on Machinery and Plant at 31st December, 1914	£448	
Do. Fixtures	40	
		488
= 1914–15 assessment		£5633

For details of the deductible and non-deductible allowances in the account, see Chapter III.

The machinery and plant account was:—

Value at 31st December, 1913	£8540
Less allowed 1914–15 at 5 per cent.	427
	8113
Add additions in 1914	860
Value at 31st December, 1914	£8973 @ 5 per cent. = £448

Limited Company.—In the case of a limited company the principles are similar. Salaries and directors' fees would be deductible, and other items are treated under their respective heads in Chapter III.

Shopkeepers.—The following actual adjustment in the case of a retail shopkeeper illustrates the practice:

Profits per a/cs	£512	
Income Tax	5	
$\frac{1}{5}$ Rates and part gas . . .	10	
Ground Rent	8	
	535	
Less $\frac{2}{3}$ net Schedule A. . .	30	
	505	= 1914
	382	= 1913
	352	= 1912
	3)1239	
	£413	= assessment 1915–16

The following adjustments apply:—

Brewery.—

Profit per a/cs		£8,136	
Interest		520	
Depreciation		624	
Income Tax A and D		280	
Reserves		100	
Law Charges *re* Mortgages . . .		27	
		9,687	
Less net Schedule A—			
Brewery	£44		
Managed and Tied Houses	525		
		569	
		9,118	= 1914
		4,720	= 1913
		6,262	= 1912
		3)20,100	
		£ 6,700	= assessment 1915–16

less depreciation.

Under *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce* (1915) (p. 104), deductions are now allowable for repairs, insurance premiums, &c., in connexion with tied houses.

Interest Payable.—

(1) If *e.g.* the *assessable* profit amounts to £100, and the interest payable in respect of loans is £450, the assessment would be made on £450, and tax would be deducted and retained by the payer on that amount when paying the interest. If, however, the net Schedule A assessment on which the trader had *borne* tax—*i.e.* if he is owner of the premises, the whole and if the rent is, say £200, and the net Schedule A £300, £100—the assessment would be less by the amount on which tax is borne, and similarly it is reduced by the amount of other taxed income, such as dividends.

Assuming that the assessable profit was £100, the interest payable *in the year of assessment* £450, the net Schedule A on which tax had been borne £100, and taxed dividends £200, the assessment would be:—

	£	£
Interest payable		450
Less net Schedule A . . .	100	
„ Taxed dividends . . .	200	
		300
		£150

This would be assessed at the unearned rate (see p. 338).

(2) Had the Schedule A and taxed dividends amounted to £450 or more, no assessment would be made under Schedule D, except on the profit of £100 at the earned rate if applicable (see p. 338). The reason for setting off taxed income against interest payable, is that the taxed income has borne tax, and as the payer of the interest deducts tax and retains it, the Revenue obviously receives tax on the £450 interest. The loan could, of course, be secured on, *e.g.*, the dividends, and be, therefore, a charge thereon. The setting off of taxed income applies to *any* taxed income and is not restricted to income specifically charged with the interest.

(3) If the interest payable is £450, and the profit, after adding back such interest, is £650, the assessment would be made on the latter amount; £450 being at the unearned rate,

and the balance at the "earned" rate (if applicable); but if there were taxed dividends and Schedule A as in (1), viz. £300, the assessment would still be at £650, but only £150 (£450 – £300) would be charged at the unearned rate and the balance at the earned rate (if applicable).

(4) **Depreciation.**—If the assessable profit is £600, the interest payable £450, and the depreciation allowance £300, the assessment would, apart from interest, be made on £600 less £300 depreciation, but interest would have to be kept in charge at £150, leaving a balance of allowable depreciation of £150 (£600 – £450), and this balance of £150 would be carried forward to future years. If there were taxed income, such as dividends or Schedule A, the amount thereof would increase the depreciation allowable in the particular year. Thus if there were taxed income of £100, the interest retained in the assessment would be £350 at the unearned rate, viz. £600 – £250 depreciation, and £50 unallowed depreciation would be carried forward to subsequent years.

Limited Companies.—In the case of limited companies there would be no distinction in *rate*, as the whole of the assessment would be charged at the unearned rate.

Rent.—As will be seen from the above examples, the practice is to add back the rent and allow the net Schedule A, as a tenant's right to deduct tax when paying rent is limited to deduction on the rent paid; thus with a net Schedule A assessment of £100 and a rent of £60, the tenant could only deduct tax on £60 and would have to bear the tax on the balance of £40, which sum is counted as part of the tenant's income (see Exemptions and Abatements, p. 332, and also Repayment, p. 402).

Returns.—The completion of Form 11 involves, as regards the profits of trade, the insertion of the adjusted profit as ascertained from the account referred to *ante*. Page 3 is, to a material extent, a repetition of page 2, and the latter need not be filled in when a claim for exemption, abatement, or relief as regards the earned rates or children is concerned;

(thus a limited company need only complete page 2), except that claims for Wear and Tear and Life Insurance Premiums have to be made on page 2, and it is necessary that the former claim should be made even though a loss is returned, in order to ensure the carrying forward of the Wear and Tear to subsequent years.

Ground Rent.—Where exemption or abatements are claimed an assessment must be retained on ground rents or interest payable, as tax is deductible therefrom by the payer. This also applies to *e.g.* collieries which do not make profits, but pay royalties.

Stock.—In *Craig (Kilmarnock), Ltd.* v. *Cowperthwaite* (1914), £25,000 was paid for assets standing in books at £75,000, and the purchase price was apportioned as to £5625 stock and £19,375 other items. The stock was actually valued at £12,790, and it was held that this figure must be used in the accounts.

Page 4 is self-explanatory and is not reproduced here, but the following is a reproduction of p. 3 :—

SECTION D.—CLAIM FOR EXEMPTION OR ABATEMENT, OR FOR RELIEF IN RESPECT OF EARNED INCOME.

Total exemption may be claimed when the income *from all sources* does not exceed £130 per annum.

Abatement of £120 may be claimed when the income *from all sources* exceeds £130, but does not exceed £400.

Abatement of £100 may be claimed when the income *from all sources* exceeds £400, but does not exceed £600.

Abatement of £70 may be claimed when the income *from all sources* exceeds £600, but does not exceed £700.

RELIEF IN RESPECT OF EARNED INCOME.

When the Income *from all sources* does not exceed £2500, and any part of that Income is *earned income*, a claim may be made for reduction of the Income Tax on the earned income to the lower rate applicable thereto.

The claimant must set forth every source of his Income, with the amount derived from each source, whether tax has been paid on it or not. The word "None" should be written in any of the spaces (*a*) to (*f*) under the heading of which the claimant has no Income. If there is not sufficient room to set out the Income in full hereon, particulars may be given on a separate sheet, and the totals brought to this page. (See Notes 13 and 18.)

No. 1.—Particulars of Income.

	Amount £ s. d.
(*a*) From Trade, Profession, Employment, or Vocation:— (See Note 19.)	
(*b*) From any Public Office or Employment not entered on page 2 hereof (*Name and Address of Company, Corporation or Public Department to be stated*):— (See Note 20.)	
(*c*) From Property, including the annual value of the property which I own and occupy:—(*Precise address to be stated*). (See Note 21.)	
(*d*) From the Occupation of Land:— (See Note 22.)	
(*e*) From Bank and other Interest, Annuities, Dividends, or other Income not already entered on this page (*giving full particulars and stating whether taxed before receipt or not*):— (See Note 23.)	
(*f*) Wife's Income, if not included above (*giving full particulars and stating whether taxed before receipt or not. If included above, it should be so stated; should there be no Income from this source, the word "None" should be inserted*):— (See Note 13.)	
Total	

No. 2.—Particulars of Charges on Income.

(See Note 24.)

(*Life Assurance Premiums should not be entered here, but on page 2.*)

Nature of the Charge	Name and Residence of the Person to whom payable	Annual Amount thereof £ s. d.
Ground Rents		
Annuities		
Patent Royalties		
Interest on Mortgages or Loans—		
Amount of Mortgage or Loan / Rate per cent.		
Other annual Charges (if any) .		
Total Charges		
Total Amount of Income from all Sources less Charges		

(If there are no Charges, write "None." It is not sufficient to leave this space blank.)

I declare that the above statement contains a full, just, and true account and return of the *whole of my Income from every source whatsoever*, for the year ending the 5th day of April, 1916, estimated according to the directions of the Income Tax Acts, and I therefore claim the relief to which I am entitled in respect of such Income.

Given under my hand this day of 191 .

Signed

Private Residence

A Woman must state after her signature whether *Married, Widow or Spinster.*

Claims—Page 3.—

(*a*) The amount to be inserted is the average profit shown by the accounts (*ante*) after deducting Wear and Tear, and, in the case of an employment, the average wages or salary paid during the three preceding years, ending, *e.g.* for 1915-16 assessment, on 5th April, 1915.

(*b*) This paragraph is for insertion of salaries or fees from public companies or appointments, etc., assessable under Schedule E (see p. 347), and should be the amount payable for the current year.

(*c*) The Income from property has to be given in this paragraph, and although the rents received are requested to be stated, they are ignored in arriving at the total income, and the net Schedule A assessments substituted therefor, but any allowances for losses of rent through voids or otherwise should be deducted. When, however, the income from the property is less than the net Schedule A assessment, such, *e.g.*, as when the tenant has a beneficial occupation, the rent, less repairs, should be inserted. (See VOIDS, p. 36.)

The annual value (that is the net Schedule A assessment) of property occupied by the owner has to be included.

(*d*) The Schedule B assessment, which in general is the gross Schedule A assessment, is the amount for insertion in this paragraph.

(*e*) In this paragraph untaxed interest should be distinguished, and the amounts of interest, dividends, etc., are those received in the preceding year, either the calendar year or the tax year to 5th April. See p. 188 as to amount to be inserted in respect of "free of tax" dividends.

Although full particulars of dividends are asked for by the form, it is unnecessary in practice to give details as the total amount is accepted, although if the "total income," as shown on the form, is very near to one of the limits for abatement or "earned" rate, fuller particulars may be requested, but such a proceeding would be unusual. It may appear that this course would lead to evasion, but it does not, as may be seen from the

fact that a person intending evasion could, even if details were given, wholly omit one or more items and the Revenue would be obviously unable to detect such omission.

In the case of Foreign Possessions (see p. 203) the amount to be entered is the average of the three preceding calendar or tax years, and Foreign Securities (see p. 202) the amount due in the current year.

The choice of "tax" or "calendar" year is left to the taxpayer.

(*f*) See p. 267. Property and Dividends, when aggregable, are calculated as *ante*.

Nothing is to be included in the above return which is not taxable, such as casual profits from realization of securities or property.

The amounts inserted should not be exclusive of Income Tax paid thereon.

Example—Year 1915-16.—A chemist has the following sources of income: average profits of trade £330, Dividends £30, Bank Interest £5, Property £20. In addition he owns his residence of a net value of £25 and on which there is a mortgage of £300 at 5 per cent. He pays Life Insurance of £10, and has two children under the age of sixteen on the 6th April, 1915.

The paragraphs of p. 3 of the Return (p. 311) are completed as follows (descriptions of properties being added), but dividends, etc. (para. *c*), need not be detailed, although tax deducted (p. 385) should be added. Tax should also be added to dividends paid "free of tax" (see p. 188).

(*a*) Chemist	£330
(*b*) None.	
(*c*) £20 + £25	45
(*d*) None.	
(*e*) £30 taxed and £5 untaxed	35
(*f*) None.	
Total	410

No. 2.

"None" is inserted against all the items, but "amount of mortgage or loan" which reads : £300 at 5 per cent. The designation of the payee is inserted	15
	£395

The total income, therefore, for abatement purposes and for "earned" rate is £395. (See p. 332 for Rates and Abatements.) The applicable abatement is £120, the applicable earned of 1*s.* $9\frac{3}{5}d.$ is chargeable on the earned portion, and the unearned rate of 2*s.* $9\frac{3}{5}d.$ for incomes between £300 and £400 on the "unearned." Adjustments are made to the latter rate in respect of dividends, etc., from which tax has been deducted at the full unearned rate of 3*s.* (p. 338). This tax would be *ultimately borne* as follows :—

	£	£			£	*s.*	*d.*
(1) Sch. D.—Trading profits		330					
less Abatement	160						
„ Insurance Premiums	10						
„ Children's allowances	50						
	—	220					
		110	@	1*s.* $9\frac{3}{5}d.$ =	9	18	0
(2) Sch. D.—Bank Interest . . .		5	„	2*s.* $9\frac{3}{5}d.$ =		14	0
(3) „ A.—Property		30	„	2*s.* $9\frac{3}{5}d.$ =	4	4	0
		15	„	3*s.* 0*d.* =	2	5	0
(4) Tax deducted dividends . . .		30	„	3*s.* 0*d.* =	4	10	0
					21	11	0
On paying the Mortgage Interest tax would be deductible @ 3*s.* . . . . =					£2	5*s.*	0*d.*
Adjustment to reduce tax on dividends to 2*s.* $9\frac{3}{5}d.$ rate (£30 @ $2\frac{2}{5}d.$) . . . . =					6*s.*	0*d.*	2 11 0
Total tax borne						£19	0 0

In (3) the assessment of £15 at 3*s.* in the £ is to cover mortgage interest, as tax at the 3*s.* rate is deducted when paying the interest, thus £12 15*s.* 0*d.* only would be due to the mortgagee. The adjustment of the tax on the dividends may be claimed by repayment within three years of the end of the year of assessment, but the allowance is extensively made from the Schedule D assessment.

Official Instructions.—The following official instructions, giving a list of deductible and non-deductible expenses, are circulated with Form 11, but the list of expenses is strictly limited and does not take cognizance of many deductions permissible in practice.

No. 11—1.

NOTES, EXPLANATIONS, AND INSTRUCTIONS IN REGARD TO THE RETURN OF INCOME FOR ASSESSMENT.

[For directions as to claiming Exemption, Abatements, Reliefs, &c., see pages 319 and 322 hereof.]

(1). Persons liable to Assessment to Income Tax.

All persons resident in the United Kingdom, whether subjects of His Majesty or not, are liable to Assessment; and also all persons not resident within the United Kingdom (whether subjects of His Majesty or not) in so far as they derive Income from property, trade, or employment in the United Kingdom.

(2). Where Income returned for Assessment is to be entered on Form No. 11.

The Income returned for Assessment is to be entered in the Statement on p. 2 of Form No. 11, and should be confined to Income not already taxed by deduction; but when Exemption, Abatement, the Reduction of Rate of tax on Small Incomes, Relief in respect of Earned Income, or Allowance for Children, is claimed, the total Income from all sources (whether taxed or not) must be entered on p. 3 of the form, according to the instructions given in Notes (17) to (23) below.

(3). Income to be entered on p. 2 of Form No. 11.

The Income to be entered on p. 2 of Form No. 11 is all such Income as is assessable under Schedule D, that is:—

(i.) Profits of Trade, Profession, Employment, or Vocation.
(ii.) Profits from Discounts and Interest of Money not taxed by deduction.
(iii.) Profits from Colonial and Foreign Securities, where the duty is not deducted by the agent entrusted with the payment thereof.
(iv.) Profits from Colonial and Foreign Possessions.
(v.) Property or Profits not coming under any of the foregoing heads, or of those enumerated below.

(4). Income not to be entered on p. 2 of Form No. 11.

Income falling under any of the following heads should not be entered on p. 2 of Form No. 11, viz. :—

(i.) Income arising from the ownership of Land, Houses, or Buildings, or from the occupation of Land within the United Kingdom.

(ii.) Income derived from the salary or emoluments of any office or employment in the public service, or under any public body (corporate or not corporate), or from any annuity, pension, or stipend payable out of public revenues of the United Kingdom.*

(iii.) Income arising from the profits, rents, or annual value of Quarries, Mines, Iron Works, Gas Works, Salt Springs or Works, Alum Mines or Works, Water Works, Streams of Water, Canals, Inland Navigations, Docks, Drains and Levels, Fishings, Rights of Markets and Fairs, Tolls, Bridges, Ferries, Cemeteries, and other concerns of the like nature within the United Kingdom.*

[* Special forms are provided for the return of Income falling under these heads, and will be supplied on application to the Assessor or Surveyor of Taxes.]

(iv.) Income from which Tax has been deducted, under the provisions of the Income Tax Acts, upon payment to the recipient.

The following are the classes of Income upon which Tax is commonly deducted before the Income reaches the recipient, viz. : Income from the Public Funds, from Loans to Corporations or to Colonial and Foreign Governments, from Interest on Mortgage of property in the United Kingdom, and from Dividends paid out of the profits of Companies carrying on business in the United Kingdom.

(5). Profits of Trade, Profession, Employment, or Vocation.

Where Income is derived from the exercise of any business, profession or employment, attention is particularly directed to the fact that the amount of Income to be returned for assessment in any given year is neither the actual Income of that year, nor the Income which a person expects to make in that year, but is a "statutory" Income, of which the amount is to be computed from actual ascertained figures. These are the figures shown by the accounts of the business or profession for the three years immediately preceding the year for which a return has to be made, and the computation from them is to be made according to prescribed rules, of which the following is an abstract :—

Rules and Regulations for Calculating Profits.

The Tax extends to the Profits of all Trades, etc., carried on or exercised in the United Kingdom by any Person whatsoever, whether a subject of His Majesty or not, and wheresoever residing ; and also to the Profits of Trades carried on or exercised elsewhere than in the United Kingdom, if carried on or exercised by Persons residing in the United Kingdom.

Average.—The amount of Profits is to be computed on an Average of the Three preceding Years, ending either on the date, prior to the 5th day of April, 1915, to which the Annual Accounts have been usually made up, or on the 5th day of April, 1915 ;

Or, if the Trade, etc., has been set up or commenced within

three years, on an average from the period of commencing the same ;

Or, if commenced within the year of Assessment, the Profits are to be estimated according to the best of your knowledge and belief, and the grounds on which the amount shall have been estimated should be stated for the information of the Commissioners.

In computing the Profits upon which the average is to be taken—

Deductions are allowed—

For Repairs of Premises occupied for the purpose of the Trade, etc., and for the Supply or Repair of Implements, Utensils, or Articles employed, not exceeding the sum usually expended for such purposes according to the average of the three years preceding.

,, Debts proved to be bad ; also for Doubtful Debts according to their Estimated Value.

„ the Rent of Premises used *solely* for the purposes of business, and not as a place of residence.

,, a proportion, not exceeding two-thirds, of the Rent of any dwelling house *partly* used for the purposes of business.

,, the Annual Value of any premises occupied by the Owner *solely* for the purposes of business, and not as a place of residence, according to the amount on which duty has been paid under Schedule A ; less ground rent, if any.

„ a proportion, not exceeding two-thirds, of the Annual Value (according to the amount on which Duty has been paid under Schedule A—less ground rent, if any), of any dwelling house occupied by the Owner and *partly* used for the purposes of business.

,, any other disbursements or expenses wholly and exclusively laid out for the purposes of the Trade, etc.

No Deductions are allowed—

For any Interest on Capital, for any Annual Interest, Annuity, or other Annual Payment, payable out of the Profits or Gains, or for any Royalty or other sum paid in respect of the user of a Patent. (The duty on such Interest, Patent Royalty, or other Annual Payment should be deducted from the person to whom the payment is made.)

,, any Sums paid as Salaries to Partners, or for Drawings by Partners.

,, any Sums invested or employed as Capital in the Trade or Business, or on account of Capital withdrawn therefrom.

,, any Sums expended in Improvement of Premises or written off for Depreciation of Land, Buildings, or Leases.

,, any Loss not connected with, or arising out of the Trade, etc.

,, any Expenses of Maintenance of the Persons assessable, their Families, or Establishments ; or for any sum expended in any other domestic or private purpose.

,, any Loss recoverable under an Insurance or Contract of Indemnity.

,, any Sum paid as Income Tax on Profits or Gains, or on the Annual Value of Trade Premises.

,, Wear and Tear of Machinery or Plant, or for any Premium for Life Assurance ; but allowances may be Claimed in respect of these items, *see* pp. 2 and 4 of the Form No. 11, and Notes (12) and (24) below.

(6). Profits from Discounts, and Interest of Money not taxed by deduction.

Under this head fall all Discounts and untaxed Interest received or credited, including Interest on Banking Account or Deposits, and also Dividends in the Public Funds of which the half-yearly amount is less than fifty shillings, where such Dividends are not payable upon Coupons annexed to Stock Certificates payable to bearer.

(7). Profits from Colonial and Foreign Securities.

The Return is to be made on the full amount of the income arising in the current year, whether the income has been or will be received in the United Kingdom or not. Any portion actually received through an Agent in the United Kingdom *who deducts British Income Tax* on payment of the Income should, however, be excluded from the Return on p. 2.

The following deductions are allowed :—

Any sum paid in respect of Income Tax in the place where the income has arisen.

Any annual interest, or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom.

The same deductions and allowances in the case of income not received in the United Kingdom as if it had been so received.

[NOTE.—The Form No. 11 is not applicable to any person who is not domiciled in the United Kingdom, or who, being a British subject, is not ordinarily resident in the United Kingdom. Such persons should fill up Section C only (on p. 2) and return the Form to the Assessor or Surveyor of Taxes, when the appropriate Form of Return will be issued to them.]

Profits from Colonial and Foreign Possessions :—

(8). Income arising from Stocks, Shares, or Rents.

The Return is to be made on the full amount of the income arising therefrom, on the average of the three preceding years, whether the income has been or will be received in the United Kingdom or not.

Deductions.—The same deductions are allowable as in the case of Colonial and Foreign Securities—see No. (7) above.

[NOTE. The Form No. 11 is not applicable to any person who is not domiciled in the United Kingdom, or who, being a British subject, is not ordinarily resident in the United Kingdom. Such persons should fill up Section C only (on p. 2) and return the Form to the Assessor or Surveyor of Taxes, when the appropriate Form of Return will be issued to them.]

(9). Other Income arising from Colonial or Foreign Possessions.

The Return is to be made on the full annual amount received in the United Kingdom on the average of the three preceding years, without any deduction.

(10). Income from Property or Profits not falling under any of the foregoing heads.

Under this head fall all annual profits or gains not included under any of the foregoing heads and not charged under any other Schedule.

(11). Date to which Profits are to be computed.

In the cases mentioned on p. 2 of Form No. 11 where the profits of "the preceding year" are to be taken as determining the amount of the income to be assessed, the year to be taken is strictly speaking the year

ended on the preceding 5th April; but in practice it is usually the last calendar year, or the last year to the date at which it is the custom of the taxpayer to make up his accounts. Similarly, where "the current year" is to be taken, this should in strictness be the current Income Tax year to 5th April following: but in practice it is usual to take the current calendar year.

(12). Wear and Tear of Machinery and Plant.

An allowance for diminished value of Machinery and Plant by reason of Wear and Tear may be claimed where the Machinery or Plant belongs to the trader, or is so let to him that he is bound to maintain and deliver it over in good condition.

Where rent is paid for the use of Machinery or Plant, and the burden of maintaining and restoring it falls upon the Lessor, no deduction for Wear and Tear is allowable to the Lessee.

(13). Mode of Assessment.

Persons assessable to Income Tax under Schedule D will be assessed in the usual course by the Commissioners of their District, unless they elect to be assessed under a number or letter, or by the Special Commissioners of Income Tax.

Persons who desire to select one of the two alternatives named above should give notice to that effect in the manner provided for on p. 2 of the Form No. 11, and should observe the directions on p. 1 of that form.

The form should be filled up before transmission in all cases.

(14). Income of Married Women.

The Income of a married woman living with her husband is, by the Income Tax Acts, deemed to be his Income; any profits from business, profession, &c., or untaxed income belonging to her are required to be returned for assessment on p. 2 by her husband, unless an application for separate assessment has been made, either by the husband or wife, within six months before the 6th May in any Income Tax year. Such application must be made in the manner and form prescribed by the Commissioners of Inland Revenue. Fuller particulars will be supplied on application to the Surveyor of Taxes. *The total amount of any exemption, relief or abatement given to husband and wife will not exceed that which would be given if no such application were made.*

(15). On whose behalf Return made.

If the Return is made on behalf of a Firm, Section G on p. 4 of Form No. 11 should always be filled up as far as it is applicable. The Precedent Acting Partner of *every* Firm is required to fill up the spaces marked (*) in Section G, and to sign the Declaration. It is unnecessary to fill up the remaining spaces unless individual partners claim Exemption, Abatement, the Reduction of Rate of Tax on Small Incomes, or Relief in respect of Earned Income.

No. 11—1A.

NOTES, EXPLANATIONS, AND INSTRUCTIONS IN REGARD TO EXEMPTIONS, ABATEMENTS, ALLOWANCES, AND RELIEFS.

(16). Exemption, Abatement, Reduction of Rate of Tax on Small Incomes, and Relief in respect of Earned Income.

For particulars as to these allowances, see Section D, on p. 3 of the Form No. 11.

(17). INCOME TO BE ENTERED ON p. 3 OF FORM No. 11.

In order to obtain Exemption, Abatement, the Reduction of Rate of tax on Small Incomes, or Relief in respect of Earned Income, the Claimant must fill up p. 3 (as well as p. 2) of Form No. 11, setting forth *every* source of his Income, including, if he is married, that of his wife (see note (27) below), with the amount derived from each source, whether returned for assessment elsewhere or not, and whether tax has already been paid on the Income or not.

The object of this requirement is to ascertain whether the total Income falls within the prescribed limits of Exemption, Abatement, or other Relief. Taxed Income included in a statement of total Income will not be assessed a second time by reason of its being entered on p. 3 of Form No. 11.

(18). Income "from Trade, Profession, Employment, or Vocation."

(*a*) An individual who has made a Return on p. 2 of Form No. 11 on his own behalf should carry to p. 3 the Income from this source as entered on p. 2, less the deduction (if any) for Wear and Tear.

(*b*) A partner in a firm should enter on p. 3 his individual share of the partnership profits, calculated as follows :—From the average profits of the Firm returned for Assessment, the amount of any Annuities, Interest, and other annual charges payable for the current year, other than Interest on partner's capital, should be deducted. The balance then remaining should be divided according to the terms of the partnership agreement, and the individual partner's share of that balance, for the current year, is the amount to be entered on p. 3 of Form No. 11.

When several partners desire to make claims, a separate form must be used by each. Application should be made to the Assessor or Surveyor of Taxes for any additional forms required.

(19). Income "from any Public Office or Employment."

Income from any Public Office or Employment is taxable under Schedule E of the Income Tax Acts, but should be included in the statement of total Income entered on p. 3 of Form No. 11.

(20). Income "from Property."

If any part of the total Income arises from the ownership of Land, Tenements, or Hereditaments, state the precise situation of each Property with the name of the occupier, and the rent or annual value, *including in the Statement Particulars of any House, Land, or other Property in the Claimant's own Occupation, whether belonging to Himself or his Wife.* If ground rent, mortgage interest, or other annual charge is payable on any of the property, particulars thereof must be stated in space "No. 2" on p. 3 of Form No. 11.

(21). Income "from the Occupation of Land."

Profits from the occupation of Land are to be taken at one-third of the full annual value inclusive of Tithe.

(22). Income from "Interest, Annuities, Dividends, and Miscellaneous Sources."

In the case of Income from Annuities, Interest of Money, or other sources not coming under any of the foregoing heads, state fully the particulars. State also in regard to each item under this head whether it has been subjected to Income Tax before receipt. The amount to be entered is the gross amount, and not the net amount received after deduction of the tax.

(23). "Charges on Income."

Particulars must be given in space "No. 2" on p. 3 of Form No. 11 of all deductions from the income, such as *Ground Rent, Interest on Mortgage or Loan (whether Secured on Property, Life Assurance Policy, Reversion, or Otherwise), Annuities, Patent Royalties, or Other Annual Payments* from which the taxpayer is entitled to deduct tax, but excluding Life Assurance Premiums, which should be entered in Section (E) on p. 4. If there are no such deductions the word "None" should be inserted. It is not sufficient to leave the space blank.

(24). Allowance in respect of Life Assurance Premiums.

The Allowance is authorized only in respect of Premiums paid on the Claimant's own Life or on that of his Wife; it is limited to an expenditure on Annual Premiums not exceeding one-sixth of the Claimant's net Income from all sources, and is not admissible as a deduction in arriving at the total Income for the purpose of a claim for Exemption, Abatement, Allowance for Children, the Reduction of Rate of tax on Small Incomes, or Relief in respect of "Earned Income." In order that the Allowance may be granted in respect of such Premiums it is necessary that the particulars indicated on p. 4 of Form No. 11 should be stated, and that the Receipts for the Premiums should, if required, be transmitted to the Surveyor of Taxes.

(25). Allowance in respect of Children.

An individual, who claims and proves that his income from all sources does not exceed £500 and that he has a child or children living and under the age of 16 years at the commencement of the year of assessment, is entitled in respect of every such child to relief from Income Tax equal to the amount of Income Tax on £25. In order to claim this relief p. 3 and Section F on p. 4 are required to be completed.

(26). Persons Resident Abroad.

No Exemption, Abatement, Reduction of Rate of tax on Small Incomes, Relief in respect of Earned Income, or allowance for Life Assurance or for Children is given unless the individual is resident in the United Kingdom, except in the case of persons who are or have been employed in the service of the Crown or of any Missionary Society abroad or of any of the Native States under the protectorate of the British Crown, or who are resident in the Isle of Man or Channel Islands, or who satisfy the Commissioners of Inland Revenue that they are resident abroad for the sake of health, or in the case of a widow who is in receipt of a pension chargeable with Income Tax and granted to her in consideration of the employment of her late husband in the service of the Crown.

(27). Income of Married Women.

The Income of a married woman living with her husband is, by the Income Tax Acts, deemed to be his Income, and if exemption, abatement, or relief be claimed, the whole of her income from every source, whether taxed or not, is required to be included in the Statement on p. 3 of the Form No. 11, unless an application for separate assessment has been made, either by the husband or wife, within six months before the 6th May in any Income Tax year—see Note (14) above—in which case the necessary return of the aggregate income of husband and wife may be made by either the husband or the wife.

Where a wife earns an income independently of her husband by the exercise of her own personal labour, and the joint income from all sources of the husband and wife does not exceed £500, a return of aggregate

income made by the husband, or a similar return made by the wife provided that an application for separate assessment has been made as above, will be treated, for the purpose of the relief granted by Section 5 of the Finance Act, 1897, as a claim in respect of the wife's profits, and as a separate claim in respect of the remaining income.

Additional Assessments.

Under section 23 of the Finance Act, 1907, additional assessments on undercharges or omissions may be made within three years after the end of the year of assessment. In *Rex* v. *Bloomsbury Income Tax Commissioners* (1915) (*a*), it was contended that there was no right in the Surveyor to make an additional assessment for a previous year where there was no liability by reason of no trade having been carried on in that year. The assessment was in respect of profits from a London partnership, and the Surveyor made the additional assessment under sec. 52 of the 1880 Act, which empowers him, on discovery that any property or profits chargeable have been omitted from the first assessment or have been undercharged, to certify additional assessments, which are then subject to appeal by the person assessed. The main point at issue was that the person assessed contended that there was no jurisdiction to assess an individual who was not chargeable, while the Crown urged that the correct and only remedy was by appeal in the ordinary course, and that it was for the assessing authority to decide in the first instance whether a person was assessable to Income Tax. The case was decided in favour of the Crown and the rule of prohibition discharged. Lord Justice Reading held that sec. 48 of the 1842 Act includes a person who is believed to be liable, and that if the Surveyor has before him information upon which "he could and did honestly believe the person to be liable to the duties, the only remedy is by the appeal prescribed by the statutes." See *Rex* v. *Newmarket Income Tax Commissioners* (1915) (p. 276), where a minor successfully contended that an assessment should be rendered void as the law cannot assess an infant personally.

(*a*) [3 K.B. 768; 31 T.L.R. 565.

CHAPTER V

APPEALS

Procedure in Assessment.—The Schedule D assessments are initially made by the Additional Commissioners (see p. 8) but the Schedule E assessments are made by the General Commissioners. In both cases the Clerk to Commissioners prepares the notices of the amount of assessment, and the question of the address to which such notices should be delivered was raised in *Berry* v. *Farrow* [1914] (*a*). Sec. 16 (*c*) of the Taxes Management Act, 1880, enacts that :—

> All notices or forms required or allowed to be served on any person may be either delivered to such person or left at the usual or last known place of abode of such person.

A Schedule E Notice of Charge, following the usual practice, was left at the place of business of the person assessed, but it was held that notice must be given to the person sought to be charged, and that the company's office in question was not a usual or last known place of abode, and that therefore no valid assessment had been made, and a distress was wrongful. The Finance Act, 1915, now provides by sec. 36 that any notice or other document to be served or delivered to an employed person may be served by post at his place of employment, while other notices or documents may be served by post in such cases as the Board of Inland Revenue may direct by Regulations.

Schedules D and E.– Appeals against Schedules D and E assessments necessitate the giving of notice within the

(*a*) 1 K. B. 632; 83 L. J. K. B. 487; 110 L. T. 104; 30 T. L. R. 129.

period of *twenty-one days* from the date of the Notice of Charge. The latter notice of the amount of assessment is prepared by the Clerk to the Commissioners, and delivered by the Assessor in the autumn. It is important however to note that the Commissioners have a wide discretion as regards admitting appeals after the expiration of the legal limit.

Prior to the year 1914–15 the limit was 10 days, not 21 days, but the latter has been adopted and given on the Notices of Charge for 1914–15.

An example which occurred in practice illustrates the scope of the Commissioners' powers. The secretary of a large limited company, on receipt of the demand note in December, intimated his intention of appealing against the assessment, and was informed by the Surveyor of Taxes that the notice of appeal could not then be entertained, as the notice should have been lodged in October (after receipt of the Notice of Charge). The secretary replied that a Notice of Charge had not been received, but a reference to the Assessors' certified list showed that delivery had duly taken place, and the refusal to admit the appeal was repeated. On the secretary pressing the matter with the Commissioners, the latter allowed the appeal, which resulted in a reduction of the assessment.

Legal Limit.—Sec. 118 of the 1842 Act enacts:—

> It shall be lawful for him on giving ten days' notice thereof in writing to the inspector or surveyor, to appeal to the Commissioners for general purposes in the same district where such assessment was made, who shall hear and determine such appeal . . . and the meetings of the Commissioners for the purpose of hearing appeals shall be held from time to time, within the time limited by the said Commissioners, with or without adjournment; and no appeal shall be received after the time so limited, except on the ground of diminution of income, as herein mentioned:
>
> Provided always, that if any person shall be prevented, by absence, sickness, or **other reasonable cause, to be allowed by the said Commissioners,** from making or proceeding upon his appeal within the time so limited, it shall be lawful for the said Commissioners to give further time for that purpose, or to admit the same to be made by any agent, clerk, or servant on the behalf of such appellant.

The admission of a belated appeal is, by the above section, left to the sole discretion of the Commissioners, who are the only judges of the reasonableness of the delay.

When the appellant has removed from the district in which he is assessed he may appeal to the Commissioners for the district into which he has removed. Sec. 55 of the 1853 Act.

Verification of Accounts.—The Commissioners may require the verification on oath of accounts or returns, but they are not compelled to put an appellant on oath, neither are they compelled to accept accounts because they are on oath. *R.* v. *Chew and Others* (1894), C. A. (*b*).

Finality of Commissioners' Decision.—The Commissioners' decision on appeal is final, unless a case is demanded (*post*). Sec. 57 (10) of the Taxes Management Act, 1880, reads:—

Appeals once determined by the general Commissioners, or by the major part of them present on the day appointed for the hearing of appeals, shall be final; and neither the determination of the Commissioners nor the assessment then and there made thereupon shall be altered at any subsequent meeting, or at any other time or place, except by order of the High Court when a case has been required as provided by this Act.

The Commissioners may increase an assessment on appeal. (Sec. 57 (8) of the 1880 Act.)

Questions of Fact.—The Commissioners' determination on points of *fact* cannot be reviewed in the Courts provided that there is evidence on which the Commissioners could base their findings of *fact*. The only review by Case Stated (*post*) is restricted to points of *law*.

Dicta on the conclusiveness of Commissioners' findings of fact have been extensively delivered in cases before the Courts.

(*b*) 71 L. T. 541; 59 J. P. 356; 14 R. 74; 11 T. L. R. 1; 3 Tax Cas. 289.

"These facts have been ascertained for us, and these facts are so ascertained that I do not think it is competent for us to go out of what has already been determined by the tribunal which the Legislature has considered sufficient to determine the form in which such a question, if it arises, should be determined." EARL HALSBURY, in *Smith* v. *Lion Brewery Co., Ltd.*, H. L. (*c*).

"The Commissioners ought not to state either side out of Court by stating, under the guise of fact, that which is really law." FARWELL, L.J., in *New Zealand Shipping Co., Ltd.* v. *Stephens*, C. A. (*d*).

"It is undoubtedly true that, if the Commissioners find a fact, it is not open to this Court to question that finding unless there is no evidence to support it." The MASTER OF THE ROLLS in *Stanley* v. *The Gramophone and Typewriter, Ltd.* (*e*).

"Now in finding questions of pure fact the tribunal is a tribunal without appeal. It is perfectly true that if it finds facts where there is no evidence, that becomes a matter of law, and we can set aside the finding, but I cannot doubt that there was evidence to support the findings of the first part of paragraph 17, and therefore they must be accepted by us legally and without criticism." FLETCHER MOULTON, L.J.

"The truth is, one is betrayed into discussing a question of fact without remembering that we have no jurisdiction over the question of fact." EARL OF HALSBURY, in *American Thread Co.* v. *Joyce*, H. L. (*f*).

"The Commissioners, after sifting the evidence, arrived at the two following conclusions. . . . These conclusions of fact cannot be impugned, and it follows that this Company was resident within the United Kingdom." The LORD CHANCELLOR, in *De Beers Consolidated Mines, Ltd.* v. *Howe* (*g*).

A somewhat opposing opinion was expressed by SIR SAMUEL EVANS, in *Ushers Wiltshire Brewery Co.* v. *Bruce* [1914], C. A. (*h*), that a finding of fact "would by no means settle

(*c*) [1909] 2 K. B. 912; 78 L. J. K. B. 1089; 101 L. T. 145; 73 J. P. 447; 25 T. L. R. 748; 53 Sol. Jo. 696, C. A.; affirmed, [1911] A. C. 150; 80 L. J. K. B. 566; 104 L. T. 321; 75 J. P. 273; 27 T. L. R. 261; 55 Sol. Jo. 269; 48 Sc. L. R. 1083; 5 Tax Cas. 568.

(*d*) (1906), 96 L. T. 50; 23 T. L. R. 213; affirmed (1907), 24 T. L. R. 172; 52 S. J. 113; 5 Tax Cas. 553

(*e*) [1906] 2 K. B. 856; 75 L. J. K. B. 1031; 95 L. T. 461; 22 T. L. R. 818; affirmed, [1908] 2 K. B. 89; 77 L. J. K. B. 834; 99 L. T. 39; 24 T. L. R. 480; 15 Mans. 251, C. A.; 5 Tax Cas. 358.

(*f*) [1913] 108 L. T. 353; 29 T. L. R. 266; 57 Sol. Jo. 321; 50 Sc. L. R. 665; 6 Tax Cas. 163.

(*g*) [1906] A. C. 455; 75 L. J. K. B. 858; 95 L. T. 221; 22 T. L. R. 756; 13 Mans. 394; 5 Tax Cas. 198.

(*h*) 2 K. B. 891; 83 L. J. K. B. 357; 30 T. L. R. 442.

the question to be determined," and that when the facts are found "the proper inference to be drawn in order to determine whether the disbursements or expenses were wholly and exclusively laid out for the purposes of the trade or concern, within the meaning of the provisions referred to is a question of law," but in *Smith* v. *Incorporated Council of Law Reporting* [1914] (*i*), Mr. Justice Scrutton said that the Commissioners were to decide all questions of fact, from which there was no appeal, and he maintained that the statement of Sir Samuel Evans (*ante*) was an *obiter dictum*. It seemed to him that the question whether money was wholly laid out for the purposes of the adventure, was a question of fact. Moreover, the judgment delivered by Sir Samuel Evans was reversed in the House of Lords (p. 104).

The only remaining question was whether there was evidence upon which they could find that. They found that although there was no legal right to this payment, it had been the habit of the council to make such payments in suitable cases. One could not help knowing that this fact would effect the amount of salary paid to reporters. Therefore there was evidence for the Commissioners to act upon, because the amount of the ordinary salaries might be affected, so that they might come to the conclusion that the payment of the lump sum was for the purposes of the adventure. *It was immaterial whether or not he would come to the same conclusion on those facts.*

In *Youngs, Crawshay & Youngs, Ltd.* v. *Brooke* (1912) (*j*), counsel for the Crown consented to an Order allowing the deductions claimed, as, *on the findings of fact in the case*, the matter was not arguable.

Presence of Surveyors.

An objectionable practice was existent prior to the decision in *Rex* v. *Brixton Income Tax Commissioners and Another*

(*i*) 3 K. B. 674; 83 L. J. K. B. 381; 30 T. L. R. 588; 6 Tax Cas. 477.
(*j*) 6 Tax Cas. 93.

(1913) (*k*). Surveyors of Taxes, acting under sec. 57 (7) (c) of the Taxes Management Act, 1880, which allows a Surveyor of Taxes to attend an appeal meeting and to "have full power and liberty to be present during all the time of hearing such appeals, and of the Commissioners determining the same," would remain in the Commissioners' presence after the appellant had been asked to retire while the Commissioners considered their decision. The injustice of such a proceeding is obvious, as Surveyors of Taxes could, and did, continue their arguments in the appellant's absence, and without the latter having an opportunity of replying to contentions, the existence of which he was of course ignorant.

The Surveyor's *right* to be present at Commissioners' meetings is limited to *appeal* meetings, therefore they have no power to require admission to *e.g.* meetings to appoint new Commissioners.

In the above case the Attorney-General, on behalf of the Crown, admitted that the practice was undesirable, and it was held that it should not continue. Surveyors of Taxes have accordingly been circularized to discontinue the practice, and the following circular was sent by the Board of Inland Revenue, to Clerks to Commissioners.

"The High Court in a recent case (*The King* v. *The Brixton Income Tax Commissioners and Another*), (*ante*) having ruled, in effect, that under section 57 (7) (c) of the Taxes Management Act, 1880, a Surveyor of Taxes has no more right than any other party to an appeal to be present when the Commissioners are arriving at their decision, instructions have been issued to Surveyors of Taxes not to claim such right unless the other party to the appeal is allowed to be present."

EVIDENCE.

The appellant may produce "lawful evidence" against the assessment, but in *Rex* v. *Offlow General Income Tax*

(*k*) 29 T. L. R. 712; 6 Tax Cas. 195.

Commissioners (1911) (*l*), on a Schedule A Appeal, the appellant, through his solicitor, desired to call expert evidence in the shape of a professional valuer, but the Commissioners refused to admit such evidence, as they had before them all the evidence they thought necessary. A rule *nisi* for a mandamus to the Commissioners to hear and determine according to law was discharged on the Commissioners "showing cause," as a mandamus would not lie to compel the Commissioners to hear expert evidence.

The mandamus was, however, a wrong proceeding, and the rule would not have been made absolute even though the Commissioners could not have legally refused to hear the expert, as it is an established principle that a mandamus will not issue where there is a specific legal remedy, and in the case in question the appellant had the option of two legal remedies but did not avail himself thereof. He could have required: -

(*a*) A case to be stated for the opinion of the High Court (*post*), or

(*b*) A valuation by an independent valuer (p. 23).

Professional Representation.

The Commissioners may permit an appellant to be represented either by a Barrister, a Solicitor, or an Accountant who has been admitted as a member "of an incorporated society of accountants," but should they refuse such permission the appeal may be taken to the Special Commissioners, who are compelled to admit such representation.

Appeals may be made either to the District Commissioners or the Special Commissioners, and in the case of the latter, notice of the appellant's intention should be given within the prescribed time limit for acceptance of notices of appeal (see p. 324).

Cases Stated.

A case may be taken to the High Court on a point of *law*.

Sec. 59 (1) of the Taxes Management Act, 1880, provides:

(*l*) 27 T. L. R. 353.

> Immediately upon the determination of any appeal under the Income Tax Acts by the general Commissioners, or by the special Commissioners, or any appeal under the Acts relating to the inhabited house duties by the general Commissioners, the appellant or the surveyor may, if dissatisfied with the determination as being erroneous in point of law, declare his dissatisfaction to the Commissioners who heard the appeal, and having so done may, within twenty-one days after the determination, require the Commissioners, by notice in writing addressed to their Clerk, to state and sign a case for the opinion of the High Court thereon. The case shall set forth the facts and the determination, and the party requiring the same shall transmit the case, when so stated and signed, to the High Court within seven days after receiving the same, and shall previously to or at the same time give notice in writing of the fact of the case having been stated on his application, together with a copy of the case to the other party, being the surveyor, or the appellant, as the case may be.

The case, which is heard on the Revenue side in the King's Bench Division, may be brought to the Court of Appeal within fourteen days from the time at which the order is signed, entered, or otherwise perfected, and from there to the House of Lords within one year, but within two years for Scotland.

It is provided by sec. 59 (4) that the fact that a case is pending shall not interfere with payment of the tax according to the Commissioners' assessment, but, on an assessment being reduced by the Court the overpaid tax is repaid "with such interest (if any) as the High Court may allow." Interest has been allowed at varying rates, such as 3½ per cent. in *Youngs, Crawshay and Youngs* v. *Brooke* (1912) (*m*), 4 per cent. in *Scottish Provident Institution* v. *Allan* (1903) (*n*), and 3 per cent. in *Gresham Life Assurance Society* v. *Bishop*, [1902] (*o*).

The following factors are material to a Case Stated.

(*m*) 6 Tax Cas. 393.

(*n*) (1901), 3 F. 874; 38 Sc. L. R. 683; affirmed, [1903] A. C. 129; 72 L. J. P. C. 70; 67 J. P. 341; 88 L. T. 478; 19 T. L. R. 432; 40 Sc. L. R. 605; 5 F. 10; 4 Tax Cas. 591.

(*o*) A. C. 287; 71 L. J. K. B. 618; 86 L. T. 693; 66 J. P. 755; 50 W. R. 593; 18 T. L. R. 626; 4 Tax Cas. 464.

(1) The *dissatisfaction* must be expressed "immediately upon the determination," as any delay in making the request renders the stating of a case invalid.

(2) The *case* must be demanded within twenty-one days after the Commissioners' determination, and a fee of £1 should accompany the written demand.

(3) Upon receiving the case it must be sent, within seven days, to the King's Remembrancer's Department at the Royal Courts of Justice, and a copy of the case must be furnished to the other party.

See p. 325 as to questions of *fact*.

LIMITATION OF CASES.

A Case Stated applies solely to "appeals" and does not cover "applications" to the Commissioners under, *e.g.* sec. 23 of the 1890 Act, and sec. 131 of the 1842 Act. See *Furtado* v. *City of London Brewery Co., Ltd.*, [1914] C. A. (p. 71) (*p*).

See p. 23, for Valuation under Schedule A, and appeals, and *Grimes* v. *Lethem* (1898) (*q*).

(*p*) 1 K. B. 709; 83 L. J. K. B. 255; 30 T. L. R. 177; 58 Sol. Jo. 270; 110 L. T. 241; 6 Tax Cas. 382.
(*q*) 3 Tax Cas. 622.

CHAPTER VI

RELIEF

Abatements and Exemption

See also pp. 310–315.

Relief is given in respect of :—

(*a*) Abatement and exemption.

(*b*) Earned income.

(*c*) Life Insurance premiums.

(*d*) Children.

In the case of a total income from all sources not exceeding £700, a scale of abatements applies, and total exemption attaches when the total income does not exceed £130. For years prior to 1915–16 the exemption limit was £160. These abatements and exemptions apply to property, dividends, and *all branches of income*, but the deductions for abatements are primarily charged against earned income. Thus, assuming that an income consisted of a salary of £200, property £40, and dividends £60, giving a total income from all sources of £300, the applicable abatement, shown in the following list, would be £120 and tax would be paid as follows :—

Earned rate £200—£120 = on £80
Unearned rate £100 = on £100

The following scale is prescribed by sec. 21 of the Finance (No. 2) Act, 1915 :—

Income.	Abatement.
Not exceeding £130	Exempt.
Over £130 but not exceeding £400	£120
„ 400 „ „ 600	100
„ 600 „ „ 700	70

The following scale was prescribed by sec. 8 of the Finance

Act, 1898, and applies for additional assessments for years prior to 1915–16 :—

Income.						Abatement.
Over £160	but not exceeding	£400	.	.		£160
,, 400	,,	,, 500	.	.		150
,, 500	,,	,, 600	.	.		120
,, 600	,,	,, 700	.	.		70

REPAYMENT.

Where tax is paid by deduction such as in the case of incomes solely or mainly derived from taxed investments, the abatement or exemption can be set against such income, and repayment claimed. Thus, if an income consisted of (*a*) profits of trade £50, (*b*) property £40, and (*c*) dividends £120, giving a total income of £210, entitled to an abatement of £120, the adjustment would be as follows :—

	Assessment.
(*a*) £50 less £50 abatement	= nil
(*b*) £40 less £40 ,, ...	= nil
(*c*) £120 taxed by deduction but repayment made on £30 balance of abatement .	= £90

The income on which tax would be borne would be £90, being £210—abatement £120.

Period of Claim.—Repayment for abatement or exemption, in respect of any source of income, can be claimed for the current tax year ending 5th April, and the preceding three years.

Forms of claim are supplied by Surveyors.

(See also p. 402 for repayment generally.)

INDIVIDUALS.

Abatements and exemption are restricted to "individuals" and therefore do not apply to, *e.g.*, a limited company. *Curtis* v. *Old Monkland Conservative Association* (1906) (*a*) and *Mylam* v. *Market Harboro' Advertiser Co.*, [1905] (*b*).

(*a*) (1905), 7 F. 119; 43 Sc. L. R. 119 reversed [1906] A. C. 86; 75 L. J. P. C. 31; 94 L. T. 7; 22 T. L. R. 177; 5 Tax Cas. 189.

(*b*) 1 K. B. 708; 74 L. J. K. B. 205; 92 L. T. 94; 53 W. R. 478; 21 T. L. R. 201; 5 Tax Cas. 95.

An unregistered Friendly Society is entitled to the exemption if its income does not exceed £130. (See p. 233.)

INCOME AGGREGABLE.

See p. 312 for details of the estimation of income for the purposes of abatement and exemption.

No income is to be brought into account on a claim except what is assessable to Income Tax, thus *e.g.*, casual profits on realization of investments or property, and gifts, are not aggregable.

The income for abatements and exemption is that *assessed for Income Tax purposes for the current year* and is therefore not the actual income of the year.

In arriving at "total income" for abatement, etc., purposes, deductions should not be made for Life Insurance premiums (p. 343) or Children's allowances (p. 346).

Dividends.—Dividends are taken, in the hands of the recipients, as being income for the period during which the profits out of which the dividends have been paid, accrued. (See pp. 188, 402.)

(For "free of tax" dividends and debenture interest, see p. 188.)

Rent Free Residence.—A rent free residence, as *e.g.* that supplied to a Bank Manager, is not to be included in the total income. *Tennant* v. *Smith*, [1892] H. L. (*c*); but if there is a power to convert such benefit of residence into money, by being permitted to let the residence, the exclusion does not apply, and the net Schedule A assessment on the residence is taken as part of the person's income. See *Corke* v. *Fry*, [1895] (*d*), where a manse occupied by a minister of the Established Church in Scotland was held to be aggregable as the minister had power to let.

Partnership Income.—The income from a partnership is

(*c*) A. C. 150; 61 L. J. P. C. 11; 66 L. T. 327; 56 J. P. 596; 3 Tax Cas. 158.

(*d*) 32 Sc. L. R. 341; 22 R. 422; 3 Tax Cas. 335.

the share to which the partner is entitled in the year, of the profits as averaged and assessed for the same year. Sec. 20 of the Finance Act, 1907.

For Super Tax the share in the partnership profits is that for the *preceding* year (sec. 66 (2) of the Finance (1909-10) Act, 1910), thus the partnership income for Income Tax purposes for a particular year is the partnership income for Super Tax for the following year. By *Brooks* v. *Inland Revenue Commissioners* (p. 408) the person could prove what his share actually was for the preceding year, based on the average, but this case was statutorily overruled by sec. 18 of the Finance Act, 1915, which provides that when an Income Tax assessment for a particular year has become final and conclusive, it shall be conclusive for Super Tax for the following year.

In the division of partnership income between the respective partners the following procedure pertains:—

Assume that the total average profits were £1100, that there is a loan of £2000 at 5 per cent., that depreciation of £100 is allowed, that A has three-fourths of the profits and £150 salary, and B one-fourth and £50 salary, that A receives £120 interest on capital and B £80.

The distribution should be in accordance with the partnership agreement as at the beginning of the tax year, and the interest on capital should be likewise.

	£	£	
Assessment . . .	1,100		
less depreciation . .	100		
net assessment . .	£1,000	200	@ unearned rate (Loan Int.)
		800	@ earned rate.

The net divisible assessment is:

	£	£
		800
less Salaries	200	
„ Interest on Capital	200	400
		400

A.	£	B.	£
$\frac{3}{4}$ of £400	300	$\frac{1}{4}$ of £400	100
Salary	150	Salary	50
Interest on capital . .	120	Interest on capital . .	80
	£570		£230

The shares of the partnership profits are therefore £570 A and £230 B. Assuming that neither partner has any other income, A would be entitled to an abatement of £100 and B of £120.

See *Gaunt* v. *Inland Revenue Commissioners*, [1913] (*e*), as to Super Tax, where the above principle was followed.

Dissolution of Partnership.—When a partnership is dissolved as to *e.g.* one of the partners, the assessment is primarily divided for the parts of the fiscal year (a) prior to, and (b) subsequent to, dissolution. Assuming that an assessment on three partners A, B, and C for 1915–16 was made at £3000, and that B retired from the partnership on 5th July, 1915, the division would be as follows, the distribution of profits under the partnership agreement having been in equal shares, while, from 5th July, A and C share equally :—

	£
(a) To 5th July, 1915 = $\frac{1}{4}$ of £3000 =	750
(b) From " " = $\frac{3}{4}$ of £3000 =	2250

A.	£	B.	£	C.	£
$\frac{1}{3}$ of £ 750 =	250	$\frac{1}{3}$ of £750 =	250	$\frac{1}{3}$ of £ 750 =	250
$\frac{1}{2}$ of £2250 =	1125			$\frac{1}{2}$ of £2250 =	1125
	£1375		£250		£1375

£3000

See p. 210 for partnerships carried on abroad when one of the partners is resident in the United Kingdom.

RESIDENTS ABROAD.

By sec. 71 of the Finance (1909–10) Act, 1910, no abatement, exemption, or relief can be extended to a person resident out of the United Kingdom, provided that—

(*e*) 3 K. B. 395; 109 L. T. 555.

Any person who is or has been employed in the service of the Crown or who is employed in the service of any missionary society abroad or in the service of any of the native states under the protectorate of the British Crown, and any person resident in the Isle of Man or Channel Islands and any person resident abroad who satisfies the Commissioners that he is so resident for the sake of health, shall be entitled to any relief, exemption, or abatement to which he would be entitled if he were resident in the United Kingdom, and if his total income from all sources were calculated as including any income in respect of which income tax may not be chargeable as well as income in respect of which income tax is chargeable.

This proviso is extended by sec. 12 of the Revenue Act, 1911, to any widow in receipt of a pension, chargeable with Income Tax, in consideration of her late husband's service under the Crown.

See under Relief (*post*) for examples of calculation of abatement and exemption.

(See also Foreign, p. 199.)

Relief.

The Income Tax rates in the £ vary in accordance with two distinctive classes of income, "earned" and "unearned." The former, which is defined *post*, is, in general, that derived from personal exertion, while the latter comprises income from property, dividends, and similar income.

The "earned" rates are lower than the "unearned" rates, but the maximum of the latter was charged on earned profits unless a claim to the "earned" rate was made before the 30th September in the year of assessment. This limit was adhered to in practice, except when there was a reasonable cause of failure to claim. The question also arose in the case of a claim having been made but not having reached the Revenue. The "earned" rate was granted on the claimant making the following declaration :—

I, A. B. of C. D. do hereby solemnly and sincerely declare that (the reasons are then given).

And I make this solemn declaration conscientiously believing

the same to be true, and by virtue of the Statutory Declarations Act, 1835.

This declaration had to be made before a Justice of the Peace or a Commissioner for Oaths, and it still applies to years prior to 1915–16.

For 1915-16 and onwards the limit of claim—30th September—is withdrawn by sec. 99 of the Finance (No. 2) Act, 1915, and this leaves the general provisions regarding repayment to apply as with abatements (p. 402), therefore the claim may be made at any time within three years after the end of the year of assessment, but the provision is not retrospective for years prior to 1915–16 (see p. 404). The graduated unearned rates (*ante*), first introduced in 1914, have no time limit of claim, therefore the three years' limit applies (p. 402).

As additional assessments may be made for the three preceding years (p. 322), the rates in the £ for those years are still operative and are as follows :—

1912–13 AND 1913–14.

Unearned.

1/2*d.*

Earned.

Not exceeding £2000	9*d.*
Exceeding £2000 but not exceeding £3000	1/-
„ £3000	1/2

1914–15.

Unearned.

Not exceeding £300	1/4	*i.e.* 1/-	+ $\frac{1}{3}$
Exceeding £300 but not exceeding £500	1/6$\frac{2}{3}$	„ 1/2	„
„ £500	1/8	„ 1/3	„

Earned.

Not exceeding £1000	1/-	*i.e.* 9*d.*	+ $\frac{1}{3}$
Exceeding £1000 but not exceeding £1500	1/2	„ 10$\frac{1}{2}$*d.*	„
„ £1500 „ „ £2000	1/4	„ 1/-	„
„ £2000 „ „ £2500	1/6$\frac{2}{3}$	„ 1/2	„
„ £2500	1/8	„ 1/3	„

1915–16.

Unearned.

Not exceeding £300	2/4⅘	*i.e.* 2/-	+ 20 %
Exceeding £300 but not exceeding £500 .	2/9⅗	„ 2/4	„
„ £500	3/-	„ 2/6	„

Earned.

Not exceeding £1000	1/9⅗	*i.e.* 1/6	+ 20 %
Exceeding £1000 but not exceeding £1500	2/1⅕	„ 1/9	„
„ £1500 „ „ £2000	2/4⅘	„ 2/-	„
„ £2000 „ „ £2500	2/9⅗	„ 2/4	„
„ £2500	3/-	„ 2/6	„

For 1916–17 the *primâ facie* rates are those for 1915–16 + 40 per cent. instead of 20 per cent., but the recent practice, as enunciated in 1914–15 and 1915–16, is to increase the rates during the year.

The basis of allowance of the above rates is "total income from all sources" (p. 334).

Increase during the Year.—The Finance Act, 1914 (Session 2), introduced an increased rate after the original rate for the year had been fixed, and it provided that both Income Tax and Super Tax rates should be doubled, but for 1914–15 only one-third of the increase was applicable. Sec. 12 (1) provided that in order to provide for the collection "for the last four months of the current income-tax year" at double the prior rates, any assessments to Income Tax or Super Tax made at the time of the passing of the Act (27th November, 1914) should be treated as increased by one-third, and any assessments not then made were to be made in an amount one-third more than the previous amount. This did not give a rate of 1*s.* 3*d.* to 5th December, 1914, and 2*s.* 6*d.* from that date, but an *average* rate of 1*s.* 8*d.* for the fiscal year 1914–15 as is shown by the provisions of sec. 12 that such deductions should be made (p. 385) from dividends, rents, etc., due or payable after 5th December, 1914, as would make the total amount deducted "for the year equal to that which would have been deducted if income-tax for the year had been at the rate of 1*s.* 8*d.*" Moreover, the section also

enacts that where income-tax is payable in respect of part only of a year, the tax "shall be deemed to be at the rate of 1*s.* 8*d.*" The Regulations authorized by the Act (p. 409) also provide accordingly.

1915–16.—Under the Provisional Collection of Taxes Act, 1913 (p. 381), the *prima facie* 1915–16 rate, until the resolution of the Committee of Ways and Means, was double the original 1914 rates, and this was actually followed in the Finance Act, 1914, but the Finance (No. 2)Act, 1915, passed on 23rd December, 1915, provides that, on the same procedure as that introduced by the Finance Act, 1914 (Session 2), the 1915–16 *average* rate for the year shall be arrived at by adding 40 per cent. for six months, *i.e.* an addition of one-fifth for the year, while for 1916–17 the *full* 40 per cent. will attach until or unless statutorily amended.

In the case of an individual who proves that his actual total income for the year of assessment is less by more than 10 per cent. than the assessed income, repayment of the additional tax produced by the *increased rates in the £* may be claimed in accordance with the following scale :—

Percentage by which the Actual Income is less than the Income on which Income Tax has been assessed or charged.	Amount of Repayment of Additional Tax.
11 per cent. and under 12 per cent	10 per cent.
12 „ „ 13 „	20 „
13 „ „ 14 „	30 „
14 „ „ 15 „	40 „
15 „ „ 16 „	50 „
16 „ „ 17 „	60 „
17 „ „ 18 „	70 „
18 „ „ 19 „	80 „
19 „ „ 20 „	90 „
20 „ or more	100 „

Definition of "Earned" Income.—"Earned" income is defined in sec. 19 (7) of the Finance Act, 1907.

(*a*) Any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance,

deferred pay, or compensation for loss of office given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay or not; and

(*b*) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual; and

(*c*) any income which is charged under Schedules B or D in the Income Tax Act, 1853, or the rules prescribed by Schedule D in the Income Tax Act, 1842, and is immediately derived by the individual from the carrying on or exercise by him of his profession, trade, or vocation either as an individual, or, in the case of a partnership, as a partner personally acting therein.

In cases where a wife's profits are deemed to be profits of the husband, any reference in this provision to the individual includes either the husband or the wife.

Sleeping partners and limited partners are assessed at the "unearned" rate.

Partner's Capital.—Where a partner makes a loan to the business as distinct from his fixed capital it has been advanced that the interest should be charged at the *unearned* rate, but there is no relevant distinction between ordinary partner's capital and such loan, as both are advances to the partnership. Moreover, if the partner increased his fixed capital by the amount of the loan the earned rate would attach on the ground of the interest being the product of the partner's personal labours.

Trust Estate.—The question of applicability of the earned rate to beneficiaries was raised in *Fry* v. *Shiel's Trustees* (1915) (*a*). Testamentary trustees carried on a business on behalf of two minors who were beneficiaries under a will, and the full net profits were annually paid over to the minors. The trustees owned the business, and the minors, who did not interfere in the conduct of the business and who had no right to the profits, were held not to be entitled to the earned rate (see p. 275).

Conversion to Limited Liability.—The "earned" income

(*a*) S. C. 159; 6 Tax Cas. 583.

provisions operate inequitably in the frequent case of conversion of a partnership to limited liability, as limited companies are assessable solely at the "unearned" rate.

Assuming that a firm, having two partners who had equal shares of the profits, was assessed for 1914–15 on £1600 at 1*s.* in the £, and that the partners' drawings amounted to £500. The business was converted to limited liability, the two partners being practically the sole shareholders, and the assessable profits, had the change not taken place, are assumed as £1600 for 1915–16. Directors' fees and salaries (to the previous partners) amount to £500.

In arriving at the liability of the firm, no deduction is allowable for partners' drawings or salaries, so that the assessment of £1600 is inclusive thereof. The earned rate of 1*s.* $9\frac{3}{5}d.$ in the £ is applicable for 1915–16.

Under limited liability a deduction is allowable for directors' fees and salaries, which are separately assessed under Schedule E (see p. 347), at the 1*s.* $9\frac{3}{5}d.$ rate, thus the Schedule D assessment would be on £1600 — £500 = £1100, but only the "unearned" rate applies to limited companies, and the assessment would be at 3*s.* in the £.

The following comparison shows the inequity :—

FIRM.

Assessment.	Tax.
£1600 at 1*s.* $9\frac{3}{5}d.$ in the £ =	£124 0 0
	£124 0 0

LIMITED COMPANY.

Assessment.	Tax.
£500 at 1*s.* $9\frac{3}{5}d.$ in the £ =	£45 0 0
£1100 at 3*s* in the £ =	165 0 0
	£210 0 0

This injustice, which equally applies with a sole proprietor adopting limited liability, may, however, be removed by so

adjusting the directors' fees and salaries as to absorb, as nearly as possible, the probable profit. Had the directors' fees and salaries in the above example been £1600, there would have been no assessment on the limited company, but assessments aggregating £1600 at 1*s.* 9$\frac{3}{4}$*d.* in the £ under Schedule E on the former partners.

Paid-up Shares Issued to Shareholders.— Where accumulations of dividends are converted to paid-up shares which are issued at nominal prices to existing shareholders, it has been contended that the difference between the market value and the cost to the shareholder forms part of the latter's total income for purposes of "Relief" for the year in which the shares are taken up. The benefit thus accruing to the shareholder is not *annual income*, and is not aggregable, it having no reference to profits made in a particular year. The portions of the dividends set aside year by year had obviously paid tax in the years in which they were so disposed of (no allowance being permissible for sums set aside, either to reserves or otherwise), and therefore any benefit received therefrom could not be taxed again, and as the dividends had been accumulating for several years, the most that could be aggregated would be one year's proportion. In a similar case which arose in practice, the Crown withdrew its claim. The distributed shares form an increase of capital comparable with an ordinary profit on realization, and they do not form "annual" income which, by sec. 2 of the 1853 Act, is essential to aggregation, as aggregable income must be such as may be *assessed*.

Life Insurance Premiums.

A deduction may be claimed *from* the assessable profit (not as a deduction in arriving thereat) of Life Insurance Premiums up to an amount not exceeding one-sixth of the total income from all sources. This applies, by sec. 54 of the 1853 Act, to premiums on endowment policies, and covers policies on—

> Any person who shall have made insurance on **his life or on the life of his wife,** or shall have contracted for any deferred annuity on his own life or on the life of his wife . . . and any person who shall under any Act of Parliament be liable to the payment of an annual sum, or to have an annual sum deducted from his salary or stipend, in order to secure a deferred annuity to his widow or a provision to his children after his death, shall be entitled to deduct the amount of the **annual premium** paid by him for such insurance or contract, or the annual sum paid by him or deducted from his salary or stipend as aforesaid, from any profits or gains in respect of which he shall be liable to be assessed.

The War.—Under sec. 26 of the Finance (No. 2) Act, 1915, the "total income" for ascertaining the one-sixth is to be that of 1913–14, and repayment for 1914–15 onwards is allowable.

Restriction of Allowance. Under sec. 17 of the Finance Act, 1915, the allowance is restricted as follows in order to avoid allowance in respect of policies which are, in reality, pure investments and have no relevant death risk :—

(1) Not more than 7 per cent. of the capital sum assured by a policy for securing a capital sum on death, whether in conjunction with any other benefit or not.

(2) Not more than £100 in all in respect of premiums for securing any other benefits.

"Capital sum on death" is not to include (*a*) any sum payable on the happening of any other contingency, (*b*) the value of premiums agreed to be returned, (*c*) benefit by way of bonus or otherwise, which is to be or may be received before or after death either by the person paying the premium or not, "and which is not the sum actually assured."

The restriction to 7 per cent. applies to individual policies, not to the aggregate owned by an individual, as this is both consistent with equity and in accordance with the statutory rule which refers to *a* policy.

The allowance for Income Tax also applies to Super Tax, so that it has a vital effect on insurance, as with Income Tax at 3*s.* in the £ premiums are reduced to 17*s.* per £, while Super Tax in addition may give a reduction to *e.g.* 14*s.*

Endowment Policies.—It was decided in *Gould* v. *Curtis*, [1913] C. A. (*f*), that the allowance applies to an endowment policy. Under these policies, which are investments, a lump sum is paid if the assured is alive at the end of a fixed period and the death risk is also covered in the interim. It was also laid down that "insurance on his life in sec. 54 had no technical meaning, but must be understood as in common parlance "among such persons as were conversant with insurance" at the time of the passing of the Act, and that the term was definable as being an agreement to pay a "given sum upon the happening of a particular event contingent upon the duration of human life."

The allowance is restricted to the cash payments, thus when part of the premium is paid by a loan from the company that part is not deductible. *Hunter* v. *The King*, [1904] H. L. (*g*).

Accident Policies.—No allowance is permissible in respect of accident policies, but when a policy covers accident and life risks, the portion of the premium attributable to the latter is allowed. The company will give the division.

Single Premium Policies.—The allowance by sec. 54 is in respect of the *annual* premium, and it has been contended that single premiums are not within that category, but "annual" is merely a measure of period, thus avoiding the allowance of, *e.g.*, two years' premiums in one year, but a policy involving two yearly premiums only would clearly be *annual*. The restricted allowance to 7 per cent. of the capital sum assured avoids full deduction, however, but the question also arises when a single premium policy is taken out and the premium is paid by instalments, the ontstanding balance being treated as a loan at interest. The instalment is, in effect, a premium, and should be allowed. *Hunter* v. *The King*, *ante*, is distinguishable, as the claim was in respect of part of the premium *not paid*,

(*f*) 3 K. B. 84; 82 L. J. K. B. 802; 108 L. T. 779; 2 T. L. R. 469; 57 S. J. 461.

(*g*) A. C. 161; 73 L. J. K. B. 381; 90 L. T. 325; 52 W. R. 593; 5 Tax Cas. 13.

whereas sec. 54 only applies to premiums *paid*, and the LORD CHANCELLOR proceeded on that point and stated that "the whole reason I give for my judgment is that it has not been paid by him."

Partnership Insurance.—Policies are extensively taken out by partnerships to provide, on the death of one partner, the capital necessary for the survivor to discharge the deceased's share. It has been contended that the premiums are not allowable as the insurance is not "on *his* life" within sec. 54, but that each partner insures the life of the other.

(See as to MARRIED WOMEN, p. 267, and as to SUPER TAX, p. 407.)

Children Allowances.—Under sec. 68 of the Finance (1909–10) Act, 1910, as amended by sec. 7 of the Finance Act, 1914, an allowance of tax on £20 is granted to a person, having a total income not exceeding £500, in respect of each child living, and under the age of 16 years at the commencement of the tax year (6th April). A child born on 6th April carries the allowance for the year commencing on that date. For 1915–16 the allowance is increased to £25. The following definitions are contained in sec. 68 (*ante*) :—

> The expression "child" and the expression "children" in this provision includes step child or step children, but does not include illegitimate child or illegitimate children: Provided that where the parents of any illegitimate child or children shall, after the birth of such child or children, have married each other, such illegitimate child or children shall be included in the expression "child" and "children."

CHAPTER VII

SCHEDULE E

SCHEDULE E covers salaries and fees derived from public appointments, and positions held under public companies and institutions.

The charging Schedule (sec. 146 of the 1842 Act) enacts:—

> The said duties shall be paid on all public offices and employments of profit of the description hereinafter mentioned within the United Kingdom; (*videlicet,*)
>
> any office belonging to either House of Parliament, or to any court of justice, whether of law or equity, in England or Scotland, Wales, the Duchy of Lancaster, the Duchy of Cornwall, or any criminal or justiciary or ecclesiastical court, or court of admiralty, or commissary court, or court martial;
>
> any public office held under the civil government of Her Majesty; or in any county palatine, or the Duchy of Cornwall;
>
> any commissioned officer serving on the staff, or belonging to Her Majesty's army;
>
> any officer in the navy, or in the militia or volunteers;
>
> any office or employment of profit held under any ecclesiastical body, whether aggregate or sole, or
>
> under any public corporation, or under any company or society, whether corporate or not corporate;
>
> any office or employment of profit under any public institution, or on any public foundation, of whatever nature or for whatever purpose the same may be established;
>
> any office or employment of profit in any county, riding, or division, shire, or stewartry, or in any city, borough, town corporate, or place, or under any trusts or guardians of any fund, tolls, or duties to be exercised in such county, riding, division, shire, or stewartry, city, borough, town corporate, or place;
>
> and every other public office or employment of profit of a public nature.

Basis of Assessment.—The usual basis of assessment in practice is that of the current tax year to the 5th April, but in the case of clerks and other employees not occupying controlling positions, the average of three years, applicable under Schedule D, is also applied to Schedule E *if claimed*. The position is anomalous in that a manager receiving a salary which increases annually, would be assessed under Schedule D on the average salary of the three preceding years if he were employed by a private firm, but if that firm were converted to limited liability, the assessment would be transferred to Schedule E, and would be based on the profits of the current year.

The assessment is charged on "all salaries, fees, wages, perquisites, or profits whatever accruing . . . after deducting the amount of the duties or other sums payable or chargeable on the same by virtue of any Act of Parliament."

(See *Hudson* v. *Gribble*, p. 354.)

Contributions made by officials of County Council Asylums under Asylum Officers' Superannuation Act, 1909, are allowed as deductions, on the undertaking that, on a refund of contributions being made, tax will be deducted at lowest rate in force from as much of the contributions as represent deductions made from salaries exceeding £150 and paid over to the Revenue.

Perquisites are referred to in Rule 4 as follows:—

> The perquisites to be assessed under this Act shall be deemed to be such profits of offices and employments as arise from fees or other emoluments, and payable either by the Crown or the subject, in the course of executing such offices or employments, and may be estimated either on the profits of the preceding year, or of the fair and just average of one year of the amount of the profits thereof in the three years preceding; such years in each case respectively ending on the fifth day of April in each year, or such other day of each year on which the accounts of such profits have been usually made up.

Commission.—See p. 154 as to the basis of ascertaining the amount of commission on profits.

Deductible Expenses.—Sec. 51 of the 1853 Act enacts:—

> In assessing the duty chargeable under Schedule E of this Act in respect of any public office or employment, where the person exercising the same is **necessarily obliged** to incur and defray out of the salary, fees, or emoluments of such office or employment the expenses of travelling in the performance of the duties thereof, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to lay out and expend money **wholly, exclusively,** and **necessarily** in the performance of the duties of his office or employment, it shall be lawful to deduct from the amount of the said salary, fees, and emoluments to be assessed under this Act the amount of all such expenses and disbursements necessarily incurred and defrayed in manner aforesaid.

By sec. 52 of the 1853 Act, provision is made for deduction, by clergymen or ministers of any religious denomination, of expenses incurred, "**wholly, exclusively, and necessarily** in the performance of his duty," and it has been held in *Lothian* v. *Macrae* (1884), (*a*) that deduction is restricted to sums necessarily expended in the *personal* performance of the duty, and that therefore allowance could not be made to a minister for payments made to an assistant, rendered necessary owing to the minister's advanced age.

The following expenses of a minister of religion are allowable under sec. 52 (*ante*):—

(*a*) Expenses of visiting members of congregation, resident in parish or not.

(*b*) Expenses of attending church meetings where part of duty required by superiors.

(*c*) Stationery.

(*d*) Communion expenses.

A deduction is not allowable for books.

Charlton v. *Commissioners of Inland Revenue* (1890) (*b*).

Rent.—See p. 98, for deduction in respect of rent of

(*a*) 22 Sc. L. R. 219; 12 R. 336; 2 Tax Cas. 65.
(*b*) 27 Sc. L. R. 647; 17 R. 785.

part of a dwelling house used for professional purposes and by clergymen.

Travelling Expenses.—An allowance is not permissible for the expenses of travelling between the residence of the person assessed and the place of business.

In *Revell* v. *Directors of Elworthy Bros. & Co.* (1890) (*c*), it was held to be inadmissible to deduct directors' expenses of travelling from their residences to the place of meeting of the company, and in *Cook* v. *Knott* (1887) (*d*), a similar restriction was placed upon a solicitor who had an appointment at Bromyard and practised at Worcester, and was not allowed to deduct the expenses of travelling between the two places.

Where, however, a director or other person has to travel to more than one place of meeting or business of the same company the above decisions are inapplicable, as it cannot be urged that the expenses are incurred for the personal reasons of the taxpayer, such *e.g.* as to take residence in a rural district. The expenses to be allowed should be the gross, less such part thereof as would cover travelling between the residence and the *nearest* place of business. Alternatively the claim could relate *solely* to the *full* cost of travelling between the residence and the more remote place of business, provided that, if the distance is greater than that between the two places of business, the cost applicable to the latter distance be substituted.

Domestic Assistance.—In *Bowers* v. *Harding*, [1891] (*e*) a schoolmaster and his wife held appointments at a joint salary as master and mistress of a school. A deduction was claimed in respect of the cost of a domestic servant, which expense was necessary in view of the absence from the home of the wife, but the deduction was held to be inadmissible.

Public Salaries.—The following section of the Finance Act, 1913, was introduced to legalize a deduction from salaries

(*c*) 55 J. P. 392; 3 Tax Cas. 12.
(*d*) 4 T. L. R. 164; 2 Tax Cas. 246.
(*e*) 1 Q. B. 560; 60 L. J. Q. B. 474; 64 L. T. 201; 55 J. P. 376; 39 W. R. 558; 3 Tax Cas. 22.

of members of Parliament, in respect of travelling expenses, etc., as it was urged that under Schedule E, such deduction, which had been allowed in practice, was illegal.

> 3. Where the Treasury are satisfied with respect to any class of persons in receipt of any salary, fees, or emoluments **payable out of the public revenue** that such persons are obliged to lay out and expend money wholly, exclusively, and necessarily in the performance of the duties in respect of which such salary, fees, or emoluments, are payable, the Treasury may fix such sum as in their opinion represents a fair equivalent of the average annual amount laid out and expended as aforesaid by persons of that class, and in assessing the income tax on the salary, fees, or emoluments of persons of that class, there shall be deducted from the amount thereof the sums so fixed by the Treasury, provided that if any person would, but for the provisions of this section, be entitled to deduct a larger amount than the sum so fixed, that sum may be deducted instead of the sum so fixed.

Engine Drivers are not assessable under Schedule E, but under Schedule D. *A.-G.* v. *Lancashire and Yorkshire Railway Co.* (1864), (*f*). A College Bursar is assessable direct under Schedule E. *Langston* v. *Glasson*, [1891] (*g*).

Employment Abroad.—In *Pickles* v. *Foster* [1913], (*h*) the employment was in the service of an English company, but exercised in West Africa. The person assessed *had a residence in England*, but the employment was held not to be assessable under Schedule E, as an office or employment under a public Corporation or Company or society, *exercised abroad*, is not within the scope of Schedule E.

(See also pp. 199–231.)

Easter Offerings.—Easter offerings are assessable under Schedule E. *Blakiston* v. *Cooper*, [1909] H. L. (*i*). The offerings in question consisted mainly of collections, the balance being

(*f*) 2 H. & C. 792; 33 L. J. (EX.) 163; 10 L. T. 95; 10 Jur. (N.S.) 705; 13 W. R. 8.

(*g*) 1 Q. B. 567; 60 L. J. Q. B. 356; 65 L. T. 159; 55 J. P. 567; 39 W. R. 476; 3 Tax Cas. 46.

(*h*) 1 K. B. 174; 82 L. J. K. 121; 29 T. L. R. 112; 20 Mans. 106; 6 Tax Cas. 131.

(*i*) A. C. 104; 78 L. J. K. B. 135; 100 L. T. 51; 53 Sol. Jo. 149; 25 T. L. R. 164; 5 Tax Cas. 347.

derived from sums sent either to the Vicar direct or to the Churchwardens.

The Bishop of the Diocese issued an appeal to the Churchwardens on account of the under-payment of clergy, requesting that the collections on Easter Day should be devoted "to the personal use of the Incumbent, and this as a personal, non-official, freewill gift."

The Churchwardens had the following notice placed in the pews:—

> "With the sanction of the Bishop of the Diocese and to meet the wishes of the congregation, the collections to be made on Easter Sunday, together with any further sums that may be sent to us, will be handed to Mr. Blakiston for his personal use as a freewill offering to him personally, and all sums given in the collection or sent to us afterwards will be given and sent on that understanding only."

The LORD CHANCELLOR said:—

> "In my opinion, where a sum of money is given to an Incumbent substantially in respect of his services as Incumbent, it accrues by reason of his office. Here the sum of money was given in respect of those services. Had it been a gift of an exceptional kind, such as a testimonial, or a contribution for a specific purpose, as to provide for a holiday, or a subscription peculiarly due to the personal qualities of the particular clergyman, it might not have been a voluntary payment for services, but a mere present."

LORD ASHBOURNE admitted that people were urged to subscribe as a personal, freewill gift, and that the contributions were entirely voluntary and the amount regulated entirely by the discretion of the subscribers.

> "But in what character did the Appellant receive them? It was suggested that the offerings were made as personal gifts to the Vicar as marks of esteem and respect. Such reasons no doubt played their part in obtaining and increasing the amount of the offerings, but I cannot doubt that they were given to the Vicar as Vicar, and that they formed part of the profits accruing by reason of his office."

In *Turton* v. *Cooper* (1905), (*k*) part of the collection

(*k*) 92 L. T. 863; 21 T. L. R. 546; 5 Tax Cas. 138.

taken in Church was given as Easter Offerings to the Incumbent, but the gift would not have been made had he not been poor.

It was held that the gift was not given as additional remuneration on account of personal poverty and was not assessable. CHANNELL, J., cited and approved an opinion of the Master of the Rolls in *Herbert* v. *McQuade* (*l*) that—

> "Broadly, are they designed to be gifts to persons who happen to be poor whilst they are in occupation of benefices which are also poor, or are they primarily intended to augment the allotted stipends attached to particular benefices without special personal reference to the Incumbent for the time being?"

That opinion, said MR. JUSTICE CHANNELL, meant that if the gifts were in the 1st category they were not taxable, but if in the 2nd they were taxable.

Free-will Offerings and Grants.—The assessability of grants and free-will offerings to clergymen is determined by the question whether the offering or grant accrues to the clergyman by virtue of his office.

Grants from the **Norwich Diocesan Branch of the Queen Victoria Clergy Sustenation Fund** are assessable, but grants from **Archdeacon Moore and Tyrell Selwyn Funds** are not assessable.

Personal gifts which are not emoluments of the office of clergymen are not assessable.

Grants from the **Curates' Augmentation Fund** in respect of lengthy service are not assessable.

Provident Funds.—In *Smyth* v. *Stretton* (1904) (*m*), a sum of £35 was annually placed to the credit of an assistant master by the governors of a college, under a Provident scheme. No part of the sum was payable until the assistant master left the college or died, and one moiety was contingent on good conduct and length of service.

(*l*) [1902] 2 K. B. 631; 71 L. J. K. B. 884; 87 L. T. 349; 66 J. P. 692; 18 T. L. R. 728; 4 Tax Cas. 489, C.A.
(*m*) 90 L. T. 756; 53 W. R. 288; 20 T. L. R. 443; 5 Tax Cas. 36.

It was held that the whole sum was assessable.

In *Hudson* v. *Gribble*, [1903] (*n*), a Corporation was authorized, under a thrift scheme, to make deductions from salaries. The contributions were returnable to the employee, except in cases of fraud or dishonesty, either by superannuation or in a lump sum with interest in the event of death or retirement. It was held that the sums in question could not be deducted.

(See as to practice p. 291.)

Bank Agents.—See p. 354.

(*n*) 1 K. B. 517; 72 L. J. K. B. 242; 88 L. T. 186; 51 W. R. 457; 4 Tax Cas. 522.

CHAPTER VIII

SCHEDULE C

This Schedule, which covers assessment by deduction, extends to "all public annuities whatever payable in the United Kingdom out of **any public revenue** in the United Kingdom or elsewhere, and also to all dividends and shares of such annuities respectively."

(See Chapter XI. for exemptions under Schedule C, and p. 385 for Rates of Deduction of Tax.)

Agents.—When foreign and colonial dividends, etc., payable out of public revenue are entrusted to an agent for payment, the agent has to render accounts to the Revenue and assessments are made on the agent, who deducts tax when making the payments.

(See p. 217.)

The above provision is extended to cover dividends from stocks or shares of foreign or colonial companies.

The person "entrusted with the payment" includes, by sec. 26 of the Customs and Inland Revenue Act, 1885, the following:—

(*a*) Any banker, or person acting as a banker, who shall set or otherwise realize coupons or warrants for, or bills of exchange purporting to be drawn or made in payment of, any dividends (save such as are payable in the United Kingdom only), and pay over the proceeds to any person or carry the same to his account;

(*b*) Any person who shall, by means of coupons received from any other person, or otherwise on his behalf, obtain

payment of any dividends elsewhere than in the United Kingdom;

(*c*) Any dealer in coupons who shall purchase coupons for any dividends (save such as are payable in the United Kingdom only) otherwise than from a banker, or person acting as a banker, or other dealer in coupons.

By sec. 24 (2) of the Customs and Inland Revenue Act, 1888, the word "coupons" in (*b*) and the expression "coupons for any dividends" in (*c*) are to include "warrants for or bills of exchange purporting to be drawn or made in payment of any dividends."

Remuneration of Agents.—A person entrusted with payment of dividends is entitled to receive as remuneration a rate fixed by the Treasury at not less than 13*s.* 6*d.* for every £1000 of dividends paid.

Securities during the War.—Sec. 47 of the Finance (No. 2) Act, 1915, allows the Treasury, during the continuance of the war and for a period of twelve months thereafter, to issue any securities—which they are empowered to issue for raising any money or loan—with a condition that neither capital or interest shall be liable to taxation, either present or future, so long as the securities are in the beneficial ownership of persons neither domiciled nor ordinarily resident in the United Kingdom.

CHAPTER IX

ADJUSTMENTS

ADJUSTMENTS of assessments are permitted *inter alia* in respect of:

(1) Setting-off a loss on one concern under Schedule D against the profits of another concern under the same Schedule and in the same ownership.

(2) Setting-off a loss under Schedules B, D or E on the profits of the current year, against taxed income under any Schedules.

(3) Adjusting the assessment under sec. 133 of the 1842 Act when profits have been reduced by reason of the existence of war.

Adjustments are also allowed by sec. 134 of the 1842 Act (p. 67), and Rule 4 to 1st and 2nd Cases, Schedule D (p. 66), and for "Commencement," p. 51, and "Discontinuance," p. 53.

(1) Section 101 of the 1842 Act.

The claim under this section should be made when the return is rendered (p. 309), as it is not, on a strict interpretation, an *appeal* section but an *assessment* section.

> Nothing herein contained shall be construed to restrain any person carrying on, either solely or in partnership, two or more distinct trades, manufactures, adventures, or concerns in the nature of trade, the profits whereof are made chargeable under the Rules of Schedule D, from deducting or setting against the profits acquired in one or more of the said concerns the excess of the loss sustained in any other of the said concerns over and above the profits thereof, in such manner as may be done under this Act where a loss shall be deducted from the profits of the same concern.

Assume that a person has two *distinct* businesses, one coal selling, and the other that of general merchant, that the profits were as follows, and that it was desired to compute the liability for 1915–16.

Coal.	£	£	Merchant.	£
Year to 31st Dec., 1912 .		428	Year to 29th Sept., 1912	824
,, ,, 1913 .	loss 650		,, ,, 1913	652
,, ,, 1914 .		42	,, ,, 1914	976
		470		
	less 650 loss			
		3)180 loss		3)2452
	Average loss	£60	Average profit	£817

The assessments would, apart from the operation of sec. 101, be made on *nil* for the coal business, and £817 for that of merchant, but under the provisions of sec. 101, the loss of £60 could be set off (on the Return Form 11, p. 309) against the profit of £817, and the assessment on the business as merchant would be made at £757.

The set-off is also applicable to the case of one Company owning all the shares in another Company and one of the Companies making a loss. "Person" includes persons and companies. Sec. 192 of the 1842 Act.

The reduction received would operate to give abatement, exemption, relief in respect of "earned" and "unearned" income, etc.

Sec. 101 has been held to be inapplicable to concerns in No. III. of Schedule A (p. 59), which comprises mines, gas-works, waterworks, etc.

The question was raised in *Wakefield Rural District Council* v. *Hall*, [1912] C. A. (*a*) (see also p. 59). The Council supplied water to several parishes in its area and was compelled by law to keep separate accounts for each parish. The water was purchased by the Council, which controlled a distributing system of mains and pipes, the mains being to a material

(*a*) 3 K. B. 328; 81 L. J. K. B. 1201; 107 L. T. 138; 76 J. P. 437; 28 T. L. R. 589; 10 L. G. R. 1002; 6 Tax Cas. 181.

extent common to all the contributory parishes. Losses were sustained in some of the parishes and profits made in others. The Council contended that the assessment should be made on:—

(*a*) The net profit of the whole supplies to the several parishes, or, alternatively,

(*b*) That if the supplies to the several parishes were separate concerns the losses should be set against the profits under sec. 101.

It was held as regards (*b*) that sec. 101 did not apply to concerns under No. III. of Schedule A.

See in *re Corporation of Birmingham*, p. 281.

In *Grove* v. *Y. M. C. A.* (1903) (*b*), the Association carried on a restaurant which was open to the general public and was conducted on ordinary commercial principles. Educational classes, gymnasiums, etc., were also carried on, and it was sought to set-off losses on the latter against the profits of the restaurant.

It was held that the profits of the restaurant were assessable, and that the set-off could not be made as the other branches were not *trades*, and that sec. 101 requires the loss of one *trade* to be set-off against the profits of another *trade*.

In *Religious Tract and Book Society of Scotland* v. *Forbes* (1896) (*c*), the Society sold Bibles, etc., at a shop, and also sent out colporteurs who sold Bibles and acted in the capacity of cottage missionaries. A profit was made on the shop, but a loss resulted from the colporteurs, and it was claimed that the loss should be set-off against the profits.

It was held that the set-off could not be made, as the colportage was not a trade

(2) **Sec. 23 of the Customs and Inland Revenue Act, 1890.**—This section is of extensive operation in practice, but its benefits, as will be seen *post*, are not of universal advantage to the taxpayer. The effect of the sec. is to allow a loss to be set

(*b*) 88 L. T. 696; 67 J. P. 279; 19 T. L. R. 491; 4 Tax Cas. 613.
(*c*) 33 Sc. L. R. 289; 3 Tax Cas. 415.

off at once instead of being allowed by falling into future averages.

Sub-section (1) reads—

> Where any person shall sustain a loss (*a*) in any trade, manufacture, adventure, or concern, or profession, employment, or vocation carried on by him either solely or in partnership, or in the occupation of lands for the purpose of husbandry only, it shall be lawful for him, upon giving notice in writing, to the surveyor of taxes for the district **within six months after the year of assessment,** to apply to the Commissioners for the general purposes of the Acts relating to income tax for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year **estimated according to the several rules and directions of the said Acts.**

(*a*) The loss is a loss on the **current trading year,** thus, if the accounts made up to the 31st December, 1915, were to show a loss, that loss could be dealt with under sec. 23 for the year of assessment 1915–16.

(*b*) The application must be made in *law* within six months after the end of the year of assessment, but, in *practice*, the time limit is extended to twelve months.

Sub-section (2) reads—

> The said commissioners shall, on proof to their satisfaction of the amount of the loss, and of the payment of income tax (*a*), upon the aggregate amount of income, give a certificate authorizing repayment of so much of the sum paid for income tax as would represent the tax upon income equal to the amount of loss, and such certificate may extend to give exemption or relief by way of abatement in accordance with the provisions of the said Acts. Upon the receipt of the certificate the Commissioners of inland revenue shall cause repayment to be made in conformity therewith.

(*a*) Form 79A is provided by Surveyors of Taxes for setting out particulars of the income which has borne tax in the year of assessment to which the claim relates, and receipts for the tax should be annexed thereto. It is, however, only necessary to insert on the form, and to furnish receipts for, taxed income which equals the amount of loss, thus, if the loss does not

equal the total taxed income the whole of the latter need not be inserted.

(*b*) If the loss shown by the accounts to 31st December, 1915, were £100, and tax had been paid on, *e.g.* property and dividends to the amount of £800, repayment would be made in respect of £100, setting-off first against "earned" income and any balance against "unearned" income. Thus, with the latter, repayment would be made at the "unearned" rate.

If the accounts for 1915 showed a loss of £100 and the assessment for 1915–16 had been made, on the average, at £200, the effect of sec. 23 would not be to discharge the whole assessment, but only to repay tax on the amount of loss, viz. £100.

(*c*) If, after setting-off the loss, the income falls within the abatement or exemption limits, the applicable abatement or the exemption may then be allowed, and by sec. 19 (6) of the Finance Act, 1907, all provisions applicable to abatements or exemption are also applicable to the "earned" rate (p. 337), so that if the setting-off of the loss brings the adjusted total income within the limit for a lower "earned" rate than that initially charged, repayment can be made accordingly.

Sub-section (4) reads :—

> Where repayment has been made to a person in any year under the provisions of this section, he shall not be entitled to claim, or be allowed, a deduction on the assessment for a subsequent year by reference to the amount of loss in respect whereof such repayment has been obtained.

This sub-sec. prevents a loss being allowed twice, once by repayment under this section, and again in the subsequent averages, thus :—

(1) If, in 1915–16, a loss of *e.g.* £100 is set-off against assessed trading profits of £100 or more, the profits of the 1915 trading year in the averages of the following three years would appear as *nil.*

(2) If a loss of £800 occurred and only £600 was set-off against profits and taxed income, a loss of £200 for 1915 would appear in the average.

Succession.—On a succession (p. 65) the allowed loss should *not* be excluded, as sub-sec. (4) only applies to the case of "*a person*" having been allowed repayment, and provides that "*he*" shall not have the benefit of the loss in future averages. The provision is thus *personal* to the particular trader.

Example of Working.—The following example relating to the year of assessment 1915-16, illustrates the working of sec. 23.

A person in trade, whose accounts were made up to 31st December annually, made profits, as adjusted for Income Tax purposes (p. 306), as follows:—

	£	
Year to 31st December, 1912 . . .	846	
,, ,, ,, 1913 . . .	672	average = £646.
,, ,, ,, 1914 . . .	420	
,, ,, ,, 1915 . .	loss £948.	

Other sources of income are taxed Dividends £550 (*including* tax deducted), Property £175 (net receipts therefrom plus tax deducted), and Mortgage Interest £95 (including tax deducted), thus the total income from all sources, "as estimated in accordance with the Income Tax Acts" would be £1466 (£820 "unearned," and £646 (average of the three preceding years, "earned") *plus* £25 excess of net Schedule A assessments over income from property (p. 312) = £1491, the *statutory* income.

Tax would be initially payable as follows for the year 1915-16, the rate in the £ (p. 338) being 3*s.* for the "unearned" income and 2*s.* 1$\frac{1}{5}$*d.* for the "earned" income.

	£	*s.*	*d.*	£	*s.*	*d.*
Schedule D on Trade (average profits)	= 646 @ 2		1$\frac{1}{5}$	= 67	16	7
Schedule A on property (net Sch. A)	= 200 @ 3		0	= 30	0	0
Tax deducted on Dividends .	= 550 @ 3		0	= 82	10	0
Tax deducted on Mortgage Interest	= 95 @ 3		0	= 14	5	0
Total Tax paid for 1915-16				£194	11	7

On the preparation of the Accounts for the year ending 31st December, 1915, it appears that a loss of £948 (*ante*) has been made. Notice is accordingly given to the Surveyor of Taxes that an adjustment is claimed under sec. 23. A copy of the year's Accounts is furnished to the Surveyor together with the completed form 79A, tax having previously been paid on the average profits of £646. The accounts would not, of course, be *available* until a much later date than 31st December.

The total taxed income for 1915-16 was £1491, and the setting-off of the loss of £948 gives a total income of £543, and therefore an abatement of £100 (p. 332) would be applicable, and also the 1*s.* $9\frac{3}{5}$*d.* rate on "earned" income (p. 338) if any of such "earned" income were to remain after the set-off. In this example the loss exceeds the assessment on the "earned" income, leaving the balance, after the set-off, as "unearned" income, and therefore repayment in respect of the abatement is made at the "unearned" rate.

In the setting-off of a loss, income taxed at the "earned" rate is primarily subject to the set-off (sec. 19 (2) of the Finance Act, 1907), and therefore the repayment would be made as follows:—

£	*s.*	*d.*		£	*s.*	*d.*
646 @	2	$1\frac{1}{5}$	in the £ =	67	16	7
302 @	3	0	in the £ =	45	6	0
948						
£100 Abatement @ 3*s.* in the £ . . . =				15	0	0
Total Tax repayable =				£128	2	7

The balance of assessable income remaining after deducting the loss of £948, is £543, which, being unearned, bears tax at 3*s.* in the £, therefore, after deducting the abatement of £100, there is a net taxable income of £443 at 3*s.* in the £ = £66 9*s.* 0*d.*, which is the difference between the original assessments of £194 11*s.* 7*d.* and the repaid tax of £128 2*s.* 7*d.*

Depreciation.—The allowance of depreciation increases a loss, thus if the actual accounts for 1915 showed a loss of £500 before allowing depreciation (as *allowed* for Income Tax purposes) of £100, the loss which could be set-off against taxed income would be £600 (p. 173). This year would then appear in subsequent averages as a profit of the amount of depreciation, £100.

Comparison.—Taking the above example, the comparative effect of (*a*), setting off the loss under sec. 23 and (*b*), allowing the loss to fall into subsequent averages, may be seen below.

Assume the profits to be as follows, and the private income, and the rates in the £, to remain stationary :—

	£	
Year to 31st December, 1912 . . .	846	
,, ,, ,, 1913 . . .	672	
,, ,, ,, 1914 . . .	420	
,, ,, ,, 1915 . . .	loss	£948
,, ,, ,, 1916 . . .	125	
,, ,, ,, 1917 . . .	486	
,, ,, ,, 1918 . . .	540	

The year 1915 will appear as *nil* in subsequent averages if sec. 23 has operated *ante*, but as a loss of £948 if sec. 23 has been ignored. In this comparison it is unnecessary to set out the full computations of each year's averages, as they are calculated on the respective periods of 3 years, as at p. 47.

Under Sec. 23.

	Net Assessment.						Tax.		
	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
1915–16	(*ante*)						66	9	0
1916–17	364 @ 2		$1\frac{1}{5}$	38	14	4			
	845 @ 3		0	126	15	0	165	9	4
1917–18	182 @ 2		$1\frac{1}{5}$	19	2	2			
	845 @ 3		0	126	15	0	145	17	2
1918–19	204 @ 2		$1\frac{1}{5}$	21	9	0			
	845 @ 3		0	126	15	0	148	4	0
							£525	19	6

Not under Sec. 23.

	Net Assessment.			Tax.		
	£	s.	d.	£	s.	d.
1915–16	646 @ 2	1 1/5	67 16 7			
	845 @ 3	0	126 15 0	194	11	7
1916-17	48 @ 1	9 3/5	4 6 4			
	845 @ 3	0	126 15 0	131	1	4
1917–18	nil					
	845 @ 3	0	126 15 0	126	15	0
1918–19	nil					
	845 @ 3	0	126 15 0	126	15	0
				£579	2	11

Total tax paid *not* under sec. 23		£579	2 11
,, ,, when ,, ,,		525	19 6
		£53	3 5

For 1919–20 and subsequent years the assessments are similar whether sec. 23 has been invoked or not, as its effect only extends to 1918–19. It will be seen that £53 3*s.* 5*d.* would be saved by setting-off the loss in 1915.

The question of whether to ignore sec. 23 or not is one for consideration of the facts of the particular case, reference being paid to prospective profits and to consideration of abatements, "earned" rates, and Super Tax, therefore, before deciding to claim under sec. 23 the matter should, so far as is possible, be estimated and then worked out on the above principle.

The following factors are important, but in the case of *e.g.* a limited Company which is not entitled to relief, such as abatement and "earned" rate, the effects of the latter are non-existent.

Sec. 23. Advantages.—(1) *When the loss is likely to continue.*—Thus, assuming the profits as shown at 31st December annually to be as follows:—

	£	
1912	500	
1913	400	
1914	600	£
1915 loss		500
1916 „		400
1917 „		200

Assessments would result as follows :—

	Under sec. 23.	Not under sec. 23.
1915–16	nil	£500
1916–17	„	166
1917–18	„	nil
1918–19	„	nil
	nil	£666

Had the profits reverted in 1916 to the normal level, there would not, all other factors apart, be any advantage or disadvantage in the operation of sec. 23, except that the sec tion gives immediate relief, whereas, otherwise, the reduction is spread over subsequent years. Thus, if the profits were £500 for 1916 and £400 for 1917, the comparison would be as follows :—

	Under sec. 23.	Not under sec. 23.
	£	£
1915–16	nil	500
1916–17	333	166
1917–18	366	200
1918–19	300	133
	£999	£999

(2) *If the rate in the £ is* **not** *likely to increase.*—Thus, if the rates in the £ were 3*s.* for 1915–16, 3*s.* 6*d.* for 1916–17, 3*s.* 9*d.* for 1917–18, and 4*s.* for 1918–19, it will be seen from the example at the end of (1) that tax would be as follows :—

	Under sec. 23.						Not under sec. 23.					
	£		*s.*	*d.*	£	*s.*	*d.*	£		*s.*	*d.*	
1915–16	nil							500	@	3	0	. . . 75 0 0
1916–17	333	@	3	6	58	5	6	166	@	3	6	. . . 29 1 0
1917–18	366	@	3	9	68	12	6	200	@	3	9	. . . 37 10 0
1918–19	300	@	4	0	60	0	0	133	@	4	0	. . . 26 12 0
					£186	18	0					£168 3 0

(3) *In the first two years of a new business.* Assume that a business is commenced in 1915; that losses are made for 1915 and 1916 of £200 and £100 respectively; that profits of £500 are made in 1917 and £500 in 1918; and that in the case of a private firm or individual or a limited Company there is other taxed income. In the case of the Company, the taxed income may take the form of Schedule A on premises owned and occupied by the Company. The Schedule D assessments would, of course, be "*nil*" for 1915–16 and 1916–17 and 1917–18 (see "AVERAGE," p. 47), the assessments for 1915–16 and 1916–17 being based on the result of the trading for 1915, while that for 1917–18 would be on the average trading of 1915 and 1916. For 1918–19 however the assessment would be on the average of the first three years of the business.

The business has taxed income of £600.

Under sec. 23.									Not under sec. 23.					
	£			s.	d.	£	s.	d.						
1915–16 repayment of	200	@	3	0	=	30	0	0	nil					
1916–17 „	100	@	3	0	=	15	0	0	nil					
1917–18 nil									nil					
	£	s.	d.	£	s.	d.			£	s.	d.	£	s.	d.
1918–19 paid	166	@ 3	0	24	18	0			66	@ 3	0	9	18	0
1919–20 „	333	@ 3	0	49	19	0			300	@ 3	0	45	0	0
Tax paid				£74	17	0	repaid	45 0 0					£54	18 0

Tax would be initially paid under both cases in the amount of £90 per annum = £450 for five years, at 3*s.* in the £ on the £600 "taxed" income.

The comparison would result as follows:—

Under sec. 23.	£	s.	d.	Not under sec. 23.	£	s.	d.
Tax paid	450	0	0	Tax paid	450	0	0
„ „	74	17	0	„ „	54	18	0
	524	17	0				
less repaid	45	0	0				
Total tax borne	£479	17	0	Total tax borne	£504	18	0

The reason of the above divergent results is that, under the principles of averaging, the loss in the first year would only come into subsequent averages for one year if the second year's trading shows a loss, thus only one-third of that loss could, apart from the operation of sec. 23, be allowed against subsequent assessments. Taking the last example, the loss of £200 would receive its first allowance against profits in the average for 1918–19, which would be—

	£	
Year to 31st December 1915	loss 200	
" " " " 1916	" 100	£
" " " " 1917	profit	500
		300 loss
		3)200
		£66

In the average for 1919–20, the 1915 loss would not appear. The 1916 loss would receive its second and last allowance of one-third in the next average for 1920–21.

Similarly, if a loss arose in the first year only, two-thirds only thereof could be allowed if the procedure of sec. 23 is not followed.

In the years 1915-16 to 1919–20, the total amounts assessed would be :—

	£
Not under sec. 23	= 866
Under sec. 23, £999—£300 repaid	= 699
	£167

This difference of £167 represents two-thirds of the 1915 loss of £200 and one-third of the 1916 loss of £100.

(4) *If it will have no probable detrimental effect on "earned" rates, abatements, etc.*—These cases require considering on the applicable facts. As shown in the example on p. 362, the set-off may affect the allowable abatements and the rate in the £.

Commissioners' Despotic Powers.—Applications under

sec. 23 may be made either to the District Commissioners or the Special Commissioners.

It has been held in *Furtado* v. *City of London Brewery Company, Ltd.*, [1914] C. A. (*d*) (see p. 71), affirming previous decisions, that an "application" is not an "appeal," and that therefore the Commissioners' decision thereon is final, as the Crown's remedy of a Case Stated (p. 329) applies solely to "appeals." Sec. 23 is an "application." This case is set out at p. 71. See sec. 57 (10) of the Taxes Management Act, 1880, at p. 325.

See also *Bruce* v. *Burton* (1901) (*e*).

This point is of considerable moment, as the Commissioners are thus able to adopt equity in place of a hard, technical construction, and as the District Commissioners are local, unbiassed, and disinterested individuals, it is clear that the working of a section with the extensive scope of that in question being solely determinable by such a body, is of advantage to the taxpayer. See *post* (Insurance Company).

The point was also raised in *Rex* v. *Commissioners of Income Tax for the City of London* (1904) (*f*).

Insurance and Financial Companies.—(See pp. 193, 242.) The income of Insurance and Financial Companies consists to a great extent of interests and dividends. It is the practice to assess these Companies on their interests and dividends, instead of on actual profits, unless the latter exceed the former. Apart from interest and dividends, Insurance Companies generally make a loss, but in claims to set-off such loss under sec. 23 against the taxed interest and dividends, the Crown successfully raises opposition on the ground that the loss does not exist, but that, on the interest and dividends being credited, a profit is shown.

Assume that the following statement applies:—

(*d*) 1 K. B. 709; 83 L. J. K. B. 255; 30 T. L. R. 177; 110 L. T. 241; 58 S. J. 270.
(*e*) 85 L. T. 227; 65 J. P. 440; 4 Tax Cas. 399.
(*f*) 91 L. T. 94.

Payments.	£	Receipts.	£
Total expenses	94,000	Interest and dividends	85,000
Balance	51,000	Other receipts	60,000
	£145,000		£145,000

The item "Interest and Dividends" would be taxed at the source by deduction, and would in an ordinary trading concern be omitted in arriving at the assessable profit.

The Surveyor of Taxes contends that there is not a "loss," but a profit of £51,000. He chooses the alternative method of *assessment* on the £85,000 interest and dividends, but for the purpose of sec. 23 he contends that a different course should be followed and the *profit* ascertained. It is obviously inequitable that one method should be rejected for *assessment* purposes and then advanced for *adjustment* purposes, particularly as it is the acknowledged practice with ordinary concerns to exclude taxed income from an Income Tax Profit and Loss Account, as otherwise double taxation would result, firstly by deduction of tax by the payer (p. 188), and secondly, under Schedule D. Under the despotic powers of the Commissioners (*ante*) the latter *could remove this inconsistency and allow Insurance and Financial Companies to set-off taxed income against a loss which arises by the exclusion of taxed income,* but sec. 12 of the Finance Act, 1915, provides that, in ascertaining under sec. 101 (p. 357), or the 1890 Act whether an *Assurance* Company has sustained a loss on its life assurance business, the income from investment of the life fund is to be treated as part of the profits of the life business.

In the above statement there would be a loss of £34,000, which could be set against the interest and dividends of £85,000, leaving taxed income of £51,000, *which coincides with what is obviously the correct profit.* The Crown would then have no advantage in adopting the option of assessment (*a*) on profits or (*b*) interest and dividends, by taking the larger, as the adjustment under sec. 23 would render the results equal.

In *Revell* v. *Edinburgh Life Assurance Co.* (*g*) (1906) (p. 245), Lord McLaren, in admitting that the Court had no power to question the Commissioners' decision on sec. 23, said that there was great difficulty in seeing any logical basis for the Revenue's adoption of one principle for assessment and another for adjustment.

Proper Accounts Unavailable.—A difficulty arises on a taxpayer who has not previously kept proper accounts, engaging an Accountant to introduce a proper system of accounts. The Accountant sometimes finds that a loss has obviously been made, but he is unable to certify the accounts as being other than approximate, with the result that the actual amount of loss, for the purposes of sec. 23, cannot be ascertained.

In such a case, if *e.g.* proper accounts were kept from January 1st, the Commissioners have granted repayment in respect of four times the loss shown in the accounts to 31st March.

(3) **Section 133.**—The Finance Act, 1914 (Session 2), enacts by sec. 13 (1) that where there has been "**diminution of profits and gains . . . due to circumstances attributable directly or indirectly to the present war,**" sec. 133 of the 1842 Act and its complement sec. 6 of the Revenue Act, 1865 (which were repealed by sec. 24 of the 1907 Act), shall be operative.

Section 133 provided that when the *assessment* was higher than the actual profits of the year of assessment such reduction as was just could be made on "application" to the Commissioners, and this took the form of a reduction to actual profits of the year. This allowance was restricted by the 1865 Act to the difference between the assessment and the average of the three years ending *in* the year of assessment. The advantages of the provisions to the taxpayer are not attended with any disadvantages, as the option of invoking the provisions is solely with the taxpayer in any year when there is a reduction.

(*g*) 5 Tax Cas. 221.

A claim may be made, in practice, within twelve months of the end of the year of assessment. In *re Cape Copper Mining Co.* (1888) (p. 41), it was laid down that the requirement of sec. 133 that the claim must be made at the "end of the year" is satisfied if the claim is made with due diligence *after* the end of the year. In practice, claims are admitted without question if made within twelve months of the end of the year.

The working of the provisions is as follows :—

	£
Profits year to 31st December, 1912	3000
,, ,, ,, ,, 1913	3200
,, ,, ,, ,, 1914	2600
,, ,, ,, ,, 1915	400

The 1915–16 assessment (*a*) and the adjusted assessment under sec. 133 (*b*) would be as follows :—

	(*a*) £		(*b*) £
1912 . .	3000	1913 . .	3200
1913 . .	3200	1914 . .	2600
1914 . .	2600	1915 . .	400
	3)8800		3)6200
	£2933		£2066

There would thus be repayment of the tax on £867, assuming the tax on the original assessment to have been paid.

The benefit of sec. 133 may be seen from the following example which shows that four-thirds of a loss may be allowed. The profits are assumed as under :—

	£
Year to 31st December, 1912 . .	2000
,, ,, ,, 1913 . . .	3000
,, ,, ,, 1914 . . .	2800 £
,, ,, ,, 1915 . . .	loss 500

The original 1915–16 assessment (*a*) and the adjusted assessment under sec. 133 (*b*) would be as follows :—

	(*a*) £		(*b*) £	
1912 . .	2000	1913 . .	3000	
1913 . .	3000	1914 . .	2800	£
1914 . .	2800	1915 . .	loss	500
			5800	
			500	
	3)7800		3)5300	
	£2600		£1766	

One-third of the loss of £500 has, therefore, been allowed in 1915–16, and, if profits regain their normal level in 1916, and sec. 133 is not invoked, the 1915 loss will come into average for the next three years also.

Sec. 133 is only annually continued during the existence of the war.

When the profits of the year of assessment are less than the assessment, but more than the adjusted average on the three years including the year of assessment, repayment is restricted to tax on the difference between the assessment and the actual profits. Assume the following profits to apply :-

	£
Year to 31st March, 1913	4000
,, ,, ,, 1914	400
,, ,, ,, 1915	2000
,, ,, ,, 1916	1500

The 1915–16 assessment (*a*) and the ordinary adjusted assessment under sec. 133 (*b*) would be as follows :—

	(*a*) £		(*b*) £
1913 . .	4000	1914 . .	400
1914 . .	400	1915 . .	2000
1915 . .	2000	1916 . .	1500
	3)6400		3)3900
	£2133		£1300

As the profits of the year of assessment — £1500 — exceed the adjusted average the repayment is as follows :—

	£
Assessment	2133
Profits of year	1500
Repayment . . . . . =	£633

It is specifically provided by sec. 13 (1) of the Finance Act, 1914 (Session 2), that "diminution of profits and gains on account of which relief can be given under this section shall not be deemed to be a specific cause" under sec. 134 of the 1842 Act (p. 67).

Persons in Military or Naval Forces.—Sec. 133 *without* its complement the 1865 Act is applicable in the following cases:—

(1) Any person who, in connexion with the present war is or has been serving in any of the military or naval forces of the Crown *at home or abroad*, or

(2) in Red Cross or Ambulance work *abroad*.

The effect of this is to give assessment on the actual profits of the year and, in the case of *e.g.* a partnership where one of the partners has joined the forces the adjustment is (*a*) that partner's share for the year + (*b*) the remaining partners' shares of the 3 years' average including the year of assessment.

Sec. 25 of the Finance (No. 2) Act, 1915, allows the pre-war rates on the *pay* to persons serving in the following capacities during the war, and the old scale of abatements, etc.

(1) Naval or military forces of the Crown.

(2) Naval or military capacity, payment being made by Parliament.

(3) British Red Cross Society abroad.

(4) St. John Ambulance Association or similar body abroad.

The pre-war rates are as given at p. 338, being the basic rates *before* addition of one-third, and the abatements, etc., at p. 332.

Sec. 13 (3) provides that a case may be demanded for the opinion of the High Court on the application of sec. 133. (See p. 329.)

Combined Effect of Sec. 133 and 1890 Act.—The claim under sec. 133 does not affect the applicability of the 1890 Act, but the latter is applied to the assessment *as adjusted under sec.* 133. The following example illustrates the point. The profits are assumed as under, and it should be noted that when the 1890 Act has been applied in a particular year the repaid loss is excluded in arriving at subsequent averages. (See p. 361.)

	£		£	£
1912 . .	4000	1916 . .	loss	600
1913 . .	4500	1917 . .	„	500
1914 . .	4200 £	1918 . .	2000	
1915 . .	loss 500	1919 . .	4000	

The original assessments on the average of the three preceding years are denoted below by (*a*), the repayment under sec. 133 (*i.e.* the difference between (*a*) and the average of the three years *including* the year of assessment) by (*b*), the amount repayable under the 1890 Act by (*c*), and the net amount on which tax is borne by (*d*).

	1915–16.		1916–17.	
(*a*)		£4233		£2900
(*b*)	£1500		£1700	
(*c*)	500	2000	600	2300
(*d*)		£2233		£600

	1917–18.		1918–19.	
(*a*)		£1400		nil
(*b*)	£1400		nil	
(*c*)	nil	1400	nil	nil
(*d*)		. . .		. . .

The order of procedure is, therefore, for the ordinary assessment (*a*) to be made, and a claim is subsequently made under sec. 133. The claim under the 1890 Act is then made.

Mines, etc.—In the case of concerns in No. III. of Schedule A (p. 55) the average is not three years, and it is

contended that with these concerns the adjustment under sec. 133 must be on the three years, but in *Ryhope Coal Co.* v. *Foyer* (1891) (p. 59), it was held that "wherever an average of three years is given in Schedule D, you must in the case of a mine read five, and with that basis you are to apply Schedule D."

Case Stated (p. 329).—A case for the opinion of the High Court applies by sec. 13 of the Finance Act, 1914 (Session 2), to claims under sec. 13 of the said Act.

CHAPTER X

PAYMENT AND RECOVERY

Payment.

The Income Tax is payable to the Collector (p. 13) in one sum on or before the 1st day of January in the year of assessment, but this is not adhered to in practice. Additional assessments are not restricted to any date. In the case of English and Irish Railways, sec. 95 of the Taxes Management Act, 1880 allows payment of Schedule D tax by four quarterly payments, on or before the 20th June, 20th September, 20th December, and 20th March respectively.

Half-yearly Collection.—In the following cases tax is collectible in two half-yearly equal instalments on 1st January and 1st July, but for 1915-16 the first instalment is to cover the liability under the original 1915 Finance Act (pp. 332, 338), while the second instalment relates to the increases occasioned by the second Act of 1915:—

Schedule D. Individuals or firms in respect of any trade, manufacture, adventure, or concern in the nature of trade or of any profession, vocation or employment.

Schedule E.—All employees.

Schedule B.—Individuals or firms occupying land for husbandry only.

With employments under Schedules D and E the above provisions are not to apply to weekly wage earners who are charged quarterly or to individuals whose tax is deducted at definite intervals of less than half a year.

Weekly Wage Earners.—(See p. 64.)

The first demand notes are generally issued in December,

but payment is not usually enforced until February, and, in many instances, at later dates.

There is no authority in Collectors to receive payment before receipt of the duplicates of the assessments, but when payment is made prior thereto, the tax is retained and provisional receipts issued.

Number or Letter Assessments.—Tax assessed under a "Number or Letter" (p. 15) is payable to the Collector of Customs and Excise, but in default of payment the assessment is added to the local Collector's duplicate and collected by him.

Unoccupied Premises and Lands, Schedule A.—When payment cannot be obtained through the tenant having removed to an unknown address, and the premises are unoccupied and no distress can be found, tax may be collected from the next tenant, who is allowed to deduct the tax from his rent.

Allowance can be claimed in respect of "voids" (p. 36).

RECOVERY.

The Collector's warrant authorizes him, without further authority, to distrain on default in payment.

A distress levied by a collector is kept for five clear days, exclusive of the day of seizure and the day of sale, at the cost of the person refusing to pay. If payment is not made within the five days the distress is appraised and sold by public auction, and any excess over the tax, plus costs and charges of taking, keeping, and selling the distress, is returned to the person assessed. See sec. 86 of the Taxes Management Act, 1880.

Goods of Third Person.—In a distraint for Income Tax the goods of a third person may not be taken in respect of an assessment under a schedule other than Schedule A, as when the tax is charged on a *person*, only his goods may be taken, but when the tax is on the *property* any goods found thereon may be lawfully distrained.

In *Macgregor* v. *Clamp & Son* (1913), C. A. (*a*), damages were claimed for wrongful distress on a piano, belonging to the wife, for the sum of £1 11s. due for Schedule A and Inhabited House Duty in respect of house occupied by the husband. The piano was used for giving music lessons.

It was held that the distress was lawful, as the taxes in question were taxes charged upon the premises and, following *Jason* v. *Dixon* (1813) (*b*), a distress could be levied on the goods of a third person. There was no privilege from distress for an instrument of trade. The Law of Distress Amendment Act, 1888, was held not to apply.

Incapacitated Persons, etc.—Executors or administrators of deceased persons, and the parents or guardians of any persons under the ages of twenty-one years, are liable to pay Income Tax due in respect of such deceased persons, or persons under age.

Breaking-open Order.—If necessary, a Collector may, under sealed warrant (form 164) of the Commissioners, break open premises in the daytime, calling a police constable to his aid.

The Collector is required to make oath as to his inability to obtain entrance, and the Commissioners' warrant cites such oath.

The Collector's presence is necessary to a lawful levy or breaking-open.

Costs of Distress.

Not Exceeding £20.—When the whole of the sums sought to be levied by distress do not exceed £20, the following scale applies:—

	s.	*d.*
Levying distress	3	0
Man in possession, per day	2	6
Appraisement, whether by one broker or more, Sixpence in the Pound on the value of the goods.		
Stamp, the lawful amount thereof.		
Catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.		

(*a*) 30 T. L. R. 128; 58 S. J. 139. (*b*) 1 M. & S. 601.

Exceeding £20.—No scale of fees is statutorily prescribed for distresses exceeding £20, but in practice the following scale is allowed, subject to the Collector first obtaining the consent of the District Commissioners, through their Clerk.

Levying distress:
Three per cent. on any sum exceeding £20 and not exceeding £50.
Two and a half per cent. on any sum exceeding £50 and not exceeding £200, and one per cent. on any additional sum.
Man in possession, five shillings per day; to provide his own board in every case.
Appraisement, whether by one broker or more, sixpence in the pound on the value as appraised.
For advertisements, the sum actually and necessarily paid.
Catalogues, sale and commission, and delivery of goods:—Seven and a half per cent. on the sum realized not exceeding £100, 5 per cent. on the next £200, 4 per cent. on the next £200, and on any sum exceeding £500 3 per cent. up to £1000, and 2½ per cent. on any sum exceeding £1000. A fraction of £1 to be in all cases reckoned £1.

Costs and charges cannot be claimed by the Collector until he has actually made a levy and an inventory of the goods received.

Committal to Prison.—A person refusing to pay and having no distrainable effects, may be committed to prison under sealed warrant of the Commissioners, and the costs of apprehending and conveying to prison are added to the tax due.

DEDUCTION OF TAX.

Prior to 1913 the practice existed of deducting tax from dividends after the introduction of the Budget but before the passing of the Finance Act legalizing the provisions of the Budget. The resolution of the Committee for Ways and Means was accepted as sufficient authority until the procedure was questioned in *Bowles* v. *Bank of England*, [1913] (*c*), when it was urged that there should not be taxation of the subject without specific legal enactment, and it was decided

(*c*) 1 Ch. 57; 82 L. J. Ch. 124; 108 L. T. 95; 6 Tax Cas. 136.

that deduction is illegal until the Finance Act imposing the tax is passed.

Sec. 30 of the Customs and Inland Revenue Act, 1890, enacts that in order to ensure collection in due time, the Income Tax provisions in force on the 5th April shall continue until amended, and the Crown relied on this section, but it was held that it only applied to the preliminaries, such as obtaining returns from taxpayers, and did not cover assessment or collection. It was held in *Bowles* v. *A.G.*, [1912] (*d*), that returns could be so demanded for Income Tax and Super Tax, but in order to legalize the practice as to deduction, the Provisional Collection of Taxes Act, 1913, was passed. This Act provides that the resolution passed by the Committee of Ways and Means of the whole House of Commons shall have statutory effect and continue existing enactments for a period expiring at the end of four months after the date on which the resolution is expressed to take effect, or, if no such date is expressed, after the date on which the resolution is passed by the Committee.

The resolution ceases to have statutory effect in the following cases :—

(1) If it is not agreed to, with or without modification, by the House within the next 10 days on which the House sits after the resolution is passed by the committee.

(2) If a Bill varying or renewing the tax is not read a second time within the next 20 days on which the House sits after the resolution is agreed to.

(3) If Parliament is dissolved or prorogued.

(4) When an Act comes into operation varying or renewing the tax.

(5) If the resolution is rejected by the House.

(6) If the provisions giving effect to the resolution are rejected during the passage of the Bill containing those provisions through the House, and the resolution, if modified by the House, shall have effect under this Act as so modified.

(*d*) 1 Ch. 123 ; 81 L. J. Ch. 155 ; 105 L. T. 870 ; 5 Tax Cas. 685.

It is provided that where the resolution ceases to have effect any money paid under the resolution shall be made good, and this also applies when the tax, as varied or renewed by the resolution, is modified by the House or an Act.

When a resolution has had statutory effect in a session, such effect cannot be again given in the same session to the same resolution or to a resolution having the same effect.

It is further provided by the Act that any payment or deduction made within one month after the date of the expiration of the tax shall be legal, subject to the condition that if a resolution is not passed by the House or by the Committee of Ways and Means of the whole House within that month for the renewal of the tax, or if such resolution is passed within that month but ceases to have effect (*ante*), any money paid or deducted shall be made good.

The question of deduction arose on the 1914-15 Budget. The Finance Bill proposed an "unearned" rate of 1*s.* 4*d.* in the £, but it was subsequently decided to reduce the rate to 1*s.* 3*d.* Tax had been extensively deducted, and the excess of 1*d.* became a repayable reduction under the Act. The Board of Inland Revenue suggested that, in the case of dividends and other items paid out of profits or gains brought into charge, the excess should be allowed on payment of the next dividend, but the recipient of the dividend could require repayment from the Company. In the case of tax deducted from payments *not* brought into charge, the Board repaid the excess on application, but in the case of the former class of payments the Board did not repay, as the Company was eventually charged only at the reduced rate on its profits.

See Deduction Schedule A, p. 33.

The second Finance Act of 1914 had a momentous effect on deduction of tax from *e.g.* dividends of companies.

There are the following two classes of payments.

Not Payable out of Profits not Charged (p. 257).

Payable out of Profits Assessed (p. 256).

With the former, the deduction must be at the rate in

force at the time of payment, while with the latter the proportions of the rates operative during the period of accrual of the payment or the profits used to pay the amount have to be observed.

Rate of Deduction.

Sec. 24 (3) of the 1888 Act (p. 257) provides as follows for the former payments *not* made out of profits charged: "Upon payment of any interest of money or annuities charged with Income Tax under Schedule D not payable, or not wholly payable, out of profits or gains brought into charge," deduction shall be made at the rate in force "at the time of payment."

Sec. 15 of the 1864 Act provides for payments made out of profits charged such as dividends, and refers to sec. 40 of the 1853 Act (p. 261), and the payments therein dealt with. Sec. 15 enacts that deduction may be made at the several rates chargeable upon the payments "or the source thereof" during the period through which the same was accruing due. With *e.g.* accumulated dividends paid out of past profits deduction should be at the rates operative when those profits were made.

Sec. 20 (1) (*c*) of the Finance (No. 2) Act, 1915, provides that deductions made after 5th October, 1915, shall be in accordance with regulations prescribed by the Commissioners of Inland Revenue, and that the total amount deducted for the year shall be "equal to that which would have been deducted if income tax for the year had been at the rate of 3*s*." With *e.g.* dividends due on 30th June, 1915, tax was deducted at 2*s*. 1*d*. in the £, being $\frac{1}{2}$ at 1*s*. 8*d*. + $\frac{1}{2}$ at 2*s*. 6*d*., the former rate being that operative for the year ending 5th April, 1915. Under the Act in question there was a deficiency of deduction on that dividend, being the difference between 2*s*. 6*d*. and 3*s*. on the half of the dividend which accrued in the year 1915–16, and, under the Act and the regulations, that deficiency has to be recovered from payments subsequent to 5th October, 1915. A similar procedure was introduced in 1914–15 when the rate was increased from 1*s*. 3*d*. to 1*s*. 8*d*. and with half-yearly

payments payable out of profits assessed, the regulations prescribed that the deficiency should be recovered from the *next* payment accruing after 5th December, 1914, but with quarterly payments of equal amount it had to be divided equally between the next two payments. With payments *not* payable out of profits charged the recovery had to be made from the next half-yearly payment before 5th April, 1915, while quarterly payments required division between such payments, except that where the payments between 6th December, 1914, and 5th April, 1915, were uneven, and the total amount could not be ascertained by the time of making the first payment the whole deficiency had to be recovered from such first payment. For 1915-16 the recovery of deficiency of deduction is controlled by the official memorandum at p. 385, which is in pursuance of Regulations under sec. 20 (1) (*c*) of the Finance (No. 2) Act, 1915, printed at p. 389. See also p. 339.

Assuming a company makes up its accounts to 31st December annually and that dividends are paid half-yearly, the following example illustrates the procedure in arriving at the adjusting deduction. The periods from 1st January to 5th April, and from 6th April to 30th June, are taken as being equal, and the interim dividend is the same as the final dividend payable in December.

Tax was deducted from the June dividend at 2*s.* 1*d.* (*ante*), and it is required to add to 3*s.*—the basic rate for the December deduction—the difference between that rate and the actual rate employed in June for that part of the dividend applicable to 1915–16. With the 2*s.* 1*d.* rate the portion of the dividend accrued in 1915–16 bore deduction at 2*s.* 6*d.* (*ante*), therefore the deficiency is 6*d.* in the £ on *one quarter* of the year's dividend, which is 3*d.* on the half-year's dividend payable at December, therefore the rate for the latter deduction becomes 3*s.* + 3*d.* = 3*s.* 3*d.* This method is only applicable if the interim dividend is the same in amount as the final dividend, as if, *e.g.*, the latter were double the former the deficiency would only be half of 3*d.* Moreover, the trading

year must be treated as an entity, as an interim dividend, being merely a payment on account, cannot be said to have accrued solely in the half-year to 30th June. The rate for the December deduction, *e.g.*, should be arrived at as follows:—

Year to 31st December, 1915.

$\frac{1}{4}$ at 1*s.* 8*d.* + $\frac{3}{4}$ at 3*s.* = 2*s.* 8*d.*

The year to 31st December, 1914, was:—

$\frac{1}{4}$ at 1*s.* 2*d.* + $\frac{3}{4}$ at 1*s.* 8*d.* = 1*s.* 6$\frac{1}{2}$*d.*

The basic rate for the whole trading year 1915 is therefore 2*s.* 8*d.*, and, in the above example, there is a deficiency at June of 2*s.* 8*d.* − 2*s.* 1*d.* = 7*d.* for the half-year, making the December deduction 2*s.* 8*d.* + 7*d.* = 3*s.* 3*d.* If the June dividend had been £100 and the December dividend £300 the addition to the deduction from the latter would be 7*d.* in the £ on £100, which is $\frac{1}{3}$ of 7*d.* on £300 = 2*s.* 8*d.* + 2$\frac{1}{3}$*d.* = 2*s.* 10$\frac{1}{3}$*d.*

The deduction at 30th June, 1916, will then be $\frac{1}{2}$ at 3*s.* + $\frac{1}{2}$ at 3*s.* 6*d.* = 3*s.* 3*d.*, thus the whole of the dividend accruing between 6th April, 1915, and 5th April, 1916, will carry deduction at 3*s.* in the £.

Memorandum as to Deduction of Income Tax for the Year 1915–16 from Payments made after the 5th October, 1915.

This Memorandum supersedes the previous Memorandum dated the 23rd September, 1915.

The cases in which deductions have to be made in pursuance of the provisions of the Finance (No. 2) Act, 1915, and the Regulations prescribed by the Commissioners of Inland Revenue in accordance therewith, fall into two main classes.

CLASS I.—Payments which are not made out of profits or gains brought into charge to Income Tax.

This class comprises:

(*a*) Dividends and Interest from the Public Funds

payable between the 6th October, 1915, and the 5th April, 1916, both dates inclusive.

(*b*) Dividends and Interest of Foreign or Colonial Government Securities, or of Foreign or Colonial Companies, entrusted to an Agent in this Country for payment here between the above-mentioned dates, also the like Dividends or Interest which, although not entrusted to an Agent in this Country for payment, are realized in the United Kingdom between those dates through Bankers, Coupon Dealers, or other persons.

(*c*) Interest and Annuities paid between those dates by Municipal Corporations or other Local Authorities to Creditors on Rates, and not paid, or not wholly paid, out of profits and gains brought into charge to Income Tax.

(*d*) Other Interest and Annuities paid between those dates, and not paid, or not wholly paid, out of profits and gains brought into charge to Income Tax.

In cases falling within Class I. :—

(i) Where any annual payment is made in one sum, tax will be deductible at the rate of 3*s.* in the £.

(ii) Where the dividend, interest or annuity is paid in two half-yearly sums of equal amount and one such sum has been paid prior to the 6th October, 1915, under deduction at the rate of 2*s.* 6*d.* in the £, tax will be deductible from the subsequent half-yearly payment at the rate of 3*s.* 6*d.* in the £.

(iii) Where the dividend, interest, or annuity is paid in four quarterly sums of equal amount, and two such sums have been paid prior to the 6th October, 1915, under deduction at the rate of 2*s.* 6*d.* in the £, tax will be deductible from each of the two subsequent quarterly payments at the rate of 3*s.* 6*d.* in the £.

(iv) Where the dividend, interest, or annuity is paid at other intervals than half-yearly or quarterly, or by payments unequal in amount, and one or more payments have been

made after the 5th April, 1915, and before the 6th October, 1915, tax will be deductible from any further payment or payments at the rate of 3s. in the £, and, in addition, such a sum will be deductible as is required to make up the difference between the total amount of the tax actually deducted from the previous payment or payments and the total amount that would have been deductible from such previous payment or payments if the rate of tax had been 3s. in the £ throughout the year commencing on the 6th April, 1915. If at the time of the first payment subsequent to the 5th October, 1915, the total amount of the dividend, interest, or annuity payable in the year ending the 5th April, 1916, can be ascertained, the additional deduction in respect of the previous payment or payments should be apportioned equally between all the subsequent payments to be made during that year; otherwise, the whole additional deduction should be made from the next payment subsequent to the 5th October, 1915.

† *CLASS II.—Payments made after the 5th October*, 1915, *out of profits or gains brought into charge to Income Tax.*

This Class comprises:—

(*a*) Ground rents, etc., secured on Property charged with Income Tax.

(*b*) Interest or Annuities wholly payable out of Property, Profits or Gains charged with Income Tax.

(*c*) Dividends paid out of the Profits or Gains of Public Companies in the United Kingdom.

Tax is deductible from payments falling within this Class at the rate or rates in force during the period through which the same were accruing due.

The adjustment of deductions from such payments is primarily a matter to be settled between the payer and the recipient and does not immediately concern the Revenue.

Under the provisions of the Finance (No. 2) Act, 1915,

and the Regulations prescribed in accordance therewith, the general principle upon which the payer is entitled to deduct tax from annual sums of this Class due or payable after the 5th October, 1915, is that the total amount deducted on account of payments accruing in the year commencing the 6th April, 1915, shall be at the rate of 3*s.* in the £.

The following observations may be of assistance to those concerned in making or adjusting deductions from payments of this Class:—

(i) Tax may be deducted at the rate of 3*s.* in the £ in respect of so much of any payment made after the 5th October, 1915, as has accrued between the 6th April, 1915, and the 5th April, 1916, inclusive.

(ii) Where before the 6th October, 1915, Tax has been deducted from a payment or payments accruing wholly or in part after the 5th April, 1915, a further deduction, in addition to that mentioned in the preceding paragraph, may be made from the subsequent payment or payments accruing before the 6th April, 1916, of such a sum as is required to make up the difference between the total amount of the tax actually deducted from so much of the previous payment or payments as accrued after the 5th April, 1915, and the total amount of the tax that would have been deducted if the rate of tax had been 3*s.* in the £ throughout the year commencing the 6th April, 1915. This further deduction should be made from the next payment made after the 5th October, 1915, except in the case of two equal quarterly payments, when it should be divided.

J. E. CHAPMAN,
Secretary.

† NOTE.—In the case of lands and heritages in Scotland it is specially provided by Section 34 of the Finance (No. 2) Act, 1915, that deductions in respect of Income Tax under Schedule A made from any rent, interest or payment due for the period ending on the 15th May shall be made at the rate

of the tax in force at the commencement of that period, and the above observations in regard to payments falling within Class II. are therefore not applicable.

Inland Revenue,
Somerset House,
London.
23rd December, 1915.

Cessation of Payments.—Sec. 20 (1) (*d*) of the Finance (No. 2) Act, 1915, provides that when there is no further payment in respect of dividends, interest, or other annual sums after 5th October, 1915, and before 6th April, 1916, sec. 14 (1) of the Revenue Act, 1911, shall apply as if the rate were 3*s.* for the year. That section enacts that deficiency of deduction may be assessed *direct* on the recipient under Case 6 of Schedule D (p. 63).

The **Regulations** are as follows :—

Regulations prescribed by the Commissioners of Inland Revenue under Section 20 (1) (c) of the Finance (No. 2) Act, 1915 :—

I. In cases where deduction of income tax is required to be made otherwise than from payments made out of profits or gains brought into charge to such tax, duty shall be deducted from any payments made after 5th October, 1915, as if income tax for the year had been at the rate of 3*s.*, and, in addition, the following provisions shall apply :-

(1) In the case of payments equal in amount where one half-yearly payment or two or more quarterly or other periodical payments shall have been made before 6th October, 1915, any additional sums for duty payable thereon by reason of the passing of the Act shall be deducted from the half-yearly or quarterly or other periodical payment or payments thereafter to be made before 6th April, 1916, provided that where more than one such payment is to be made, the deductions from every such payment shall be equal in amount.

(2) In cases where periodical payments are unequal in

amount and any such payments shall have been made before 6th October, 1915, any additional sums for duty payable thereon by reason of the passing of the Act shall be deducted from any other periodical payments thereafter to be made before 6th April, 1916, provided that where more than one such payment is to be made the deductions from every such payment shall, where the total amount of the whole of such payments can be ascertained at the time when the first of those payments is made, be apportioned equally between the whole of those payments, but where the total amount of the whole of such payments cannot be ascertained at the time when the first of those payments is made, deduction shall be made from the first payment.

II. Subject to the provisions of Section 34 of the Finance (No. 2) Act, 1915 (which relate to deductions in respect of income tax under Schedule A, on lands and heritages in Scotland), where payments are made out of profits or gains brought into charge to income tax and under the Income Tax Acts, that tax is deductible from any payment at the rate or rates in force during the period through which the same was accruing due, any deduction so made after 5th October, 1915, may be made as if income tax for the year had been at the rate of 3*s.*, and, in addition, may include any sum by which any previous deduction of income tax on account of payments accruing due since 5th April, 1915, is less than the sum which would have been deductible if income tax for the year had been at the rate of 3*s.* Provided that if any such payments shall have been made prior to 6th October, 1915, any additional sums for duty deductible in consequence of the passing of the Act shall be deducted from the next payment, or if there be two or more payments of equal amount to be made in respect of income accruing before 6th April, 1916, then such additional sum shall be so deducted as to make the deductions in respect of each of those payments equal in amount.

See *Lanston Monotype Co.* v. *Anderson* (1911), (p. 289).

Back Duty.

There is no legal claim by the Revenue to "Back Duty" in respect of unassessed or underassessed profits, except that additional assessments or surcharges may be made for the three years preceding the year of assessment.

In practice, however, Surveyors of Taxes claim "Back Duty" for *e.g.* eight or nine years, but they have no legal authority for such action. On a refusal to pay, the practice is to threaten the imposition of penalties in respect of inaccurate Returns (p. 400). The power of imposing penalties lies mainly with the Commissioners (see p. 2), a point which is of moment in view of the fact that the Revenue is statutorily restricted as regards repayment to the taxpayer of tax overpaid, to a maximum period of three years (p. 402), and it may be contended that the limit applying to repayment by the Crown would be equitably applicable to repayment to the Crown. This argument is supported by sec. 23 (2) of the Finance Act, 1907, restricting the making of additional assessments in respect of past under-payments to a similar period of three years, and it would thus appear to have been the intention of the Legislature that the limitations should be coincident.

There being no legal right to make assessments for a longer period than the three preceding years, in some cases "Back Duty" may be levied in the form of inflated assessments for the three years, but the Commissioners, on appeal, may reduce such assessment, to the actual profits as ordinarily ascertained for Income Tax purposes.

Surcharges.—Surcharges may be made in treble duty, but on appeal the Commissioners may adjust the surcharge to the profits, and in single duty (sec. 68 (2) of Taxes Management Act, 1880).

CHAPTER XI

EXEMPTIONS

Charities

Schedule A.—Exemptions from tax under Schedule A are allowed by No. VI. of Schedule A as follows:—

In occupation.—(1) For the duties charged on any **college or hall** in any of the universities of the United Kingdom, in respect of the public buildings and offices belonging to such college or hall, and not occupied by any individual member thereof, or by any person paying rent for the same, and for the repairs of the public buildings and offices of such college or hall, and the gardens, walks, and grounds for recreation repaired and maintained by the funds of such college or hall:

Or on any **hospital, public school, or almshouse**, in respect of the public buildings, offices, and premises belonging to such hospital, public school, or almshouse, and not occupied by any individual officer or the master thereof, whose whole income, however arising, estimated according to the rules and directions of this Act, shall amount to or exceed one hundred and fifty pounds per annum, or by any person paying rent for the same, and for the repairs of such hospital, public school, or almshouse, and offices belonging thereto, and of the gardens, walks, and grounds for the sustenance or recreation of the hospitallers, scholars, and almsmen, repaired and maintained by the funds of such hospital, school, or almshouse:

Or on any building the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is made or demanded for any instruction there afforded, by lectures or otherwise; provided also, that the said building be not occupied by any officer of such institution, nor by any person paying rent for the same:

The said allowances to be granted by the Commissioners for general purposes in their respective districts:

Let to Tenants.—(2) Or on the rents and profits of lands, tenements, hereditaments, or heritages belonging to any **hospital, public school, or almshouse, or vested in trustees for charitable purposes**, so far as the same are applied to charitable purposes:

> The said last mentioned allowances to be granted on proof before the Commissioners for special purposes of the due application of the said rents and profits to charitable purposes only, and in so far as the same shall be applied to charitable purposes only.

It was held in *Rex* v. *Special Commissioners* (*ex parte Essex Hall*), [1911] C.A. (*a*) that the above provision only applied to property let to tenants, thus a charity which is *not* within (1) is allowed exemption from Schedule A on property let, but not in respect of property in the occupation of the claimants. A charity has to be within (1) *and* (2) to carry exemption under Schedule A on *all* property owned by the charity.

Hospital, Public School, and Almshouse.—To constitute a hospital, public school, or almshouse, within No. VI. of Schedule A, it is not necessary that the support should be wholly charitable, but it must be mainly so.

In *Trustees of Mary Clark Home* v. *Anderson*, [1904] (*b*) the Home was for ladies in reduced circumstances, but who had an annual income of not less than £25 and not more than £55. Coal, gas and attendance were provided free, with one or two unfurnished rooms; but food, clothing, washing, furniture, and medical attendance had to be provided by the inmate. The expenses of the Home were derived from endowments.

It was held that the Home was an "almshouse" within No. VI. of Schedule A, and therefore exempt even though it was not wholly supported by charitable subscriptions.

CHANNELL, J.:

> "I have come to the conclusion on the whole that this, being an institution the objects of which are entirely and absolutely charitable, can be deemed to be an almshouse. I do not think it is necessary that to make a thing an almshouse it should be for entirely destitute people or that it should supply all the wants of its inmates."

(*a*) 2 K. B. 434; 80 L. J. K. B. 1035; 104 L. T. 764; 27 T. L. R. 466; 5 Tax Cas. 636.
(*b*) 2 K. B. 645; 73 L. J. K. B. 806; 91 L. T. 457; 20 T. L. R. 626 5 Tax Cas. 48.

In *Cawse* v. *The Committee of the Lunatic Hospital Nottingham*, [1891] (*c*) the hospital, which was not for paupers, had a substantial charitable endowment, and fees were paid by patients.

It was held that the exemption under No. VI. of Schedule A in respect of hospitals applied.

CHARLES, J. said:

> "Now, all colleges and halls of universities are exempt, and I think that they would remain exempt, even though it was proved that in any particular year a particular college or hall had, if I may use an ordinary expression, paid its way. Then comes the exemption of hospitals, public schools, or almshouses, and it has been held with regard to public schools that those words used as they are, in connexion with the word almshouse which follows it, apply to a public school which has some charitable element in its endowments. To that extent the words 'public school' are to be restricted. The same thing has been held with reference to hospitals."

MR. JUSTICE CHARLES further held that the word hospital does not include the case of a hospital with no charitable endowment, but that it does include the case of a hospital which has a substantial charitable endowment.

It was held in *Needham* v. *Bowers* (1888) (*d*) that a lunatic asylum which was wholly self-supporting was not exempt as a "hospital." There was no annual charitable endowment, but a few patients were maintained free of cost.

Charitable Purposes.—In *Special Commissioners of Income Tax* v. *Pemsel*, [1891] H. L. (*e*), certain lands were vested in trustees upon trust to apply the rents and profits to maintaining:—

(*a*) Missionary establishments abroad.

(*b*) School for children of missionaries and ministers.

(*c*) Choir houses.

It was held that the trust was one for "charitable purposes."

(*c*) 1 Q. B. 585; 60 L. J. Q. B. 485; 65 L. T. 155; 39 W. R. 461; 3 Tax Cas. 39.

(*d*) 21 Q. B. D. 436; 59 L. T. 404; 37 W. R. 125; 2 Tax Cas. 360.

(*e*) A. C. 531; 61 L. J. Q. B. 265; 65 L. T. 621; 55 J. P. 805; 3 Tax Cas. 53.

In *Maughan* v. *Free Church of Scotland* (1893) (*f*) an Assembly Hall was held in trust for the Free Church, and it was used for meetings of the General Assembly who sit annually for about ten days, and for meetings for Commissions of Assembly about three times a year. Occasionally it was used for other purposes, mainly connected with religion, charity, and temperance.

It was held that the Hall was not within No. VI. of Schedule A, and that the clause (*marked* 2 *ante*) deals only with rents and profits of land and not with the lands themselves.

The latter point was elaborated in *Rex* v. *Special Commissioners* (*ex parte Essex Hall*), [1911] C. A. (*g*). A limited Company, which was not trading for profit, and was admitted to be "trustees for charitable purposes," owned a building partly let to a tenant, and the remainder, comprising the greater part thereof, was used for religious purposes in connexion with which the Company was formed. When not required for such purposes that part of the building was let for public meetings. The Company was assessed under Schedule A in respect of the whole building, but obtained repayment in respect of the part let to a tenant.

It was held that the exemption in No. VI. (*marked* (2) *ante*), in respect of being vested in trustees for charitable purposes, does not apply to property in *occupation*, but only where it is let to a tenant and rent results, and that the words "so far as the same are applied to charitable purposes" qualify "rents and profits," not "lands, tenements, etc."

In *Rex* v. *Special Commissioners* (*ex parte University College of North Wales*) (1909), C. A. (*h*) the college, which provided a liberal education, derived its income from investments.

(*f*) 30 Sc. L. R. 666; 20 R. 759; 3 Tax Cas. 207.

(*g*) 2 K. B. 434; 80 L. J. K. B. 1035; 104 L. T. 764; 27 T. L. R. 466; 5 Tax Cas. 636.

(*h*) 78 L. J. K. B. 576; 100 L. T. 585; 25 T. L. R. 368; 53 S. J. 320; 5 Tax Cas. 408.

part being appropriated to (*a*) specific educational purposes, and part to (*b*) the general purposes of the college.

It was held that the college was established for "charitable purposes" only; that the revenues (*b*) were applied to "charitable purposes"; and that exemptions applied to them under Schedules A, C, and D.

The MASTER OF THE ROLLS approved the following opinion of LORD HERSCHELL in *Commissioners of Inland Revenue* v. *Scott*, [1892] (*i*):—

> "It cannot be doubted that property held by a body corporate or unincorporate 'for the promotion of education, literature, science, or the fine arts,' is technically held upon a charitable trust."

The definition of charity by LORD MACNAGHTEN in *Special Commissioners* v. *Pemsel* (*k*) (p. 394) was also approved. His Lordship divided charities into four classes:—

(1) Trusts for the relief of poverty.

(2) Trusts for the advancement of education.

(3) Trusts for the advancement of religion.

(4) Other trusts for other purposes beneficial to the community.

As regards (4) LORD MACNAGHTEN said:—

> "The trusts last referred to are not the less charitable in the eye of the law because incidentally they benefit the rich as well as the poor, as indeed every charity that deserves the name must do, either directly or indirectly."

Public Schools.—In *Bain* v. *Free Church of Scotland* (1897) (*l*), a Free Church College, which was a Divinity Hall, was intended for the training of candidates for the ministry, but other students were admissible.

It was held that the College was not a "Public School" within No. VI. of Schedule A. In *Blake* v. *Mayor, etc., of*

(*i*) 2 Q. B. 152; 67 L. T. 173; 56 J. P. 580; 40 W. R. 632, C. A.
(*k*) [1891] A. C. 531; 61 L. J. Q. B. 265; 65 L. T. 621; 55 J. P. 805; 3 Tax Cas. 53.
(*l*) 34 Sc. L. R. 351; 24 R. 496; 3 Tax Cas. 537.

London, [1887] C. A. (*m*) the Corporation of London founded the City of London School to give a liberal education to the sons of persons engaged in professions, commerce, or trade, and part of the Corporation's estate was charged with payment of an annual sum towards the support of the School. No profit was sought or made, but substantial fees were charged.

It was held that the School was a "Public School" within No. VI. of Schedule A.

In *Ackworth School General Committee* v. *Betts* (1915), the school was opened in 1779, and was established by subscriptions given by members of the Society of Friends. The cost of maintenance per head was £44 11*s.* 5*d.*, while only £6 10*s.* 2¾*d.* was received from sources other than school fees, so that the charitable element was small. It was held that the school was not within the words "public school."

Libraries and other Literary Institutions.—Free libraries carry exemption unless a subscription library is attached.

In *Mayor, etc., of Manchester* v. *McAdam*, [1896] H. L. (*n*), a Free Library was maintained by the Corporation, under the Public Libraries Act, 1892, and it was held that the exemption to "literary or scientific" institutions, applied.

In *Musgrave* v. *Magistrates, etc., of Dundee* (1897) (*o*), in one of the rooms of a building used mainly as a "Free Library," the books of a Subscription Library were accommodated, and were under the control of the librarian of the Free Library. After a year's circulation, the books were given, absolutely, to the Free Library.

It was held that the exemption did not apply.

The LORD PRESIDENT held that to establish a title to exemption it must be shown that the building is used solely for the purposes of the Free Library.

It was held in *Farmer* v. *Juridical Society of Edinburgh*,

(*m*) 19 Q. B. D. 79; 56 L. J. Q. B. 424; 36 W. R. 791; 2 Tax Cas. 209.
(*n*) A. C. 500; 65 L. J. Q. B. 672; 75 L. T. 229; 61 J. P. 100; 3 Tax Cas. 491.
(*o*) 34 Sc. L. R. 702; 24 R. 930; 3 Tax Cas. 552.

[1914] (*p*), that the Juridical Society was not a "literary or scientific institution" within No. VI. of Schedule A (*ante*), as it was only incidentally scientific, being mainly professional.

The following Exemptions under Schedule A also apply:—

Churches and Chapels.

Public Parks and recreation grounds, whether belonging to Corporations or not, when used solely by and held in trust for the public.

Workhouses and Asylums.

Council Schools.

Denominational Schools and Mission Rooms.

Parish Halls, Rooms, and Clubs, Church Institutions, and Sunday Schools, if mainly used for religious purposes. Buildings used exclusively for worship.

See FRIENDLY SOCIETIES, p. 231, TRADE UNIONS, p. 232, and INDUSTRIAL AND PROVIDENT SOCIETIES, p. 232.

The occupation of a servant is the occupation of the employer. Thus, a Bank Manager is not the "occupier" of the residential quarters assigned to him, neither is a policeman as regards a house which adjoins a police station and in which he is compelled to live.

Private Act.—A private Act which covered exemption from all Parliamentary rates, taxes, assessments and payments whatever was held in *Stewart* v. *Conservators of the River Thames*, [1908] (*q*), to include income tax.

In *Duke of Argyll* v. *I. R. Commissioners*, [1914] (*r*), it was provided by a special Act of 1871 that an annuity of £6000 per annum for life should be settled upon the Duchess of Argyll, "to be free from all taxes, assessments, and charges." Sec. 187 of the 1842 Act enacts that no statute granting any salary, annuity, or pension, "free of any taxes, deductions, or assessments," shall extend to Income Tax, but it was held

(*p*) 51 Sc. L. T. 643; 6 Tax Cas. 467.
(*q*) 1 K. B. 893; 77 L. J. K. B. 396; 98 L. T. 900; 5 Tax Cas. 297.
(*r*) 109 L. T. 893; 30 T. L. R. 48.

that as the 1842 and the 1871 Acts were inconsistent the latter must prevail.

CROWN PRIVILEGE.

An Assize Court and police station were held not to be assessable, as being in the service of the Crown. *Coomber* v. *Justices of County of Berks* (1883), H. L. (*s*).

Municipal Offices.—A Burgh Court, being a Court of Justice, is exempt, but municipal offices and corporation baths are not. *Adam* v. *Maughan* (1889) (*t*).

Premises occupied for the administration of justice and also for municipal purposes, and as private offices, are not exempt. *Brown* v. *Smith* (1901) (*u*).

SCHEDULE C.

Exemption applies to the stocks, dividends, or interests of

Friendly Societies. (See p. 231.)
Savings Banks (p. 231).
Charitable Institutions (p. 231).
Industrial and Provident Societies (Registered) (p. 232).
Trade Unions (Registered) (p. 232).
National Health Insurance Funds.

See *Queen* v. *Special Commissioners* (1889) (*x*). The Yorkshire Penny Bank claimed repayment of tax deducted from interest on investments, but repayment was restricted to the tax applicable to sums paid to depositors whose annual interest did not amount to £3. The Bank obtained a Rule *nisi* for a mandamus, but the Rule was discharged on the understanding that the said restricted repayment be made.

(*s*) 9 App. Cas. 61; 53 L. J. Q. B. 239; 50 L. T. 405; 32 W. R. 525; 2 Tax Cas. 1.
(*t*) 27 Sc. L. R. 64; 2 Tax Cas. 541.
(*u*) 39 Sc. L. R. 20; 4 F. 31; 4 Tax Cas. 435.
(*x*) 2 Tax Cas. 510.

SCHEDULE D.

Yearly Interest or other Annual Payments.—Charitable Institutions so far as the income is applied to charitable purposes are exempt (as under Schedule C) (*ante*). (Sec. 105 of Income Tax Act, 1842.)

This exemption was held in *Psalms and Hymns* (*Trustees of*) v. *Whitwell* (1890) (*y*), not to apply to trading profits. See also *St. Andrews Hospital, Northampton* v. *Shearsmith* (1887) (*z*).

Interest and other Profits or Gains.—See FRIENDLY SOCIETIES, etc., p. 231.

PENALTIES.

Sec. 55 of the 1842 Act imposes penalties :—

(*a*) not exceeding £20 and treble duty when the proceedings are had before the Commissioners, or

(*b*) £50 when the proceedings are taken in the High Court; but this does not apply if treble duty in (*a*) has been charged.

The offence to which penalties apply is non-delivery of a return or statement (p. 309), or delivery of a return or statement which is incorrect and negligently made, even though there is no evidence of fraud.

The offence is committed if the person "shall refuse or neglect" to deliver the lists or statements required.

Neglect to deliver a Schedule required by sec. 120 of the 1842 Act (p. 300), or neglect to appear before the Commissioners when requested, is met with the penalty (*a*) *ante* (sec. 128 of the 1842 Act).

Amendment of Schedule. Sec. 129 of the 1842 Act provides that :—

> If any person who shall have delivered a statement or schedule shall discover any omission or wrong statement therein, it shall be lawful for him to deliver an additional statement or schedule

(*y*) 7 T. L. R. 164; 3 Tax Cas. 7.
(*z*) 19 Q. B. D. 624; 57 L. T. 413; 35 W. R. 811; 2 Tax Cas. 219.

rectifying such omission or wrong statement, **and such person shall not afterwards be subject to any proceeding by reason of such omission or wrong statement**; and if any person shall not have delivered a statement or schedule within the time limited by the Commissioners for that purpose, it shall be lawful for him to deliver a statement or schedule, in manner herein directed, at any time before a proceeding shall be had to recover the penalty herein mentioned, and no proceeding shall be afterwards had for recovering such penalty; and if any proceeding shall have been actually had before the Commissioners for recovering such penalty, it shall be lawful for the said Commissioners, on due proof to their satisfaction that no fraud or evasion whatever was intended, to stay such proceedings, either on the terms of paying or without paying the costs then incurred, as the Commissioners shall think fit; and if any proceeding shall have been commenced in any court, it shall be lawful for the Commissioners to certify, that, in their judgment, no fraud or evasion was intended by the party making such omission, and it shall be lawful for any judge of such court, on a summary application, to stay such proceedings on such terms as he shall think fit.

In *A.G.* v. *Till*, [1910] H. L. (*a*), it was held that the penalties imposed by sec. 55 were incurred not solely by non-delivery but by delivery of a return which was not true and correct, even though no fraud had been intended.

The LORD CHANCELLOR said that unless penalties are imposed in clear terms they are not enforceable.

LORD SHAW OF DUNFERMLINE pointed out that Mr. Till did not invoke sec. 129 (*ante*), and LORD GORELL, in referring to this section, said:

> "The section was evidently framed to give persons power to make a delivery and to make amendments, and, although it is ambiguously worded, I think the reasonable meaning to give to it is that it permits of the exercise of the powers conferred by it, in proper cases both before and after proceedings and both in respect of non-delivery and delivery of an incorrect statement, so as to mitigate hardships which might otherwise arise."

If, therefore, past returns have been made to the best of the judgment and ability of the tax-payer, sec. 129 avoids the

(*a*) A. C. 50; 79 L. J. K. B. 141; 101 L. T. 819; 26 T. L. R. 134; 54 Sol. Jo. 132; 5 Tax Cas. 440.

levying of penalties, and thus back duty for more than the three preceding years (*post*).

It has been contended, in practice, that sec. 129 only applies to the preceding appeal sections, but LORD GORELL stated in the above case that it covers the case of a statement under sec. 52.

Proceedings for recovery of a penalty may be commenced within three years. Sec. 23 (1) of the Finance Act, 1907.

Sec. 166 of the 1842 Act imposes penalties for untrue abatement claims, but *L. A.* v. *McLaren* (1905), laid down that this applies not to *inaccurate* declarations, but to *false* or untruthful claims.

REPAYMENT.

Repayment of Income Tax overpaid is made by the Revenue in certain cases. Time limits of claim are imposed in some instances and left open in others, but sec. 10 of the Income Tax Act, 1860, enacts—

> No claim for repayment of duty under this Act, or any former Act relating to the income tax shall be allowed unless it shall be made within three years next after the end of the year of assessment to which the claim shall relate.

Abatements, etc.—Abatements, exemption, earned rates and *graduated* unearned rates, life insurance premiums, and children's allowances are repayable for the three preceding years and the current year. See p. 334 as to dividends.

Repayment in respect of dividends may be made within three years of the end of the year in which the dividends were declared and became payable.

Double Assessments.—Relief may be granted for the three preceding years in respect of profits doubly assessed.

Schedule A.—In years other than the 1st of a quinquennial, repayment may be made in respect of over-assessment of Schedule A, if the claim is made within twelve months, but this concession is not of universal application, and it is usually

necessary to give notice in the autumn of the intention to contest the assessment.

Voids.—(See p. 36.) Repayment in respect of void property may be claimed for the three preceding years, but in some instances the Revenue seeks to restrict the repayment to one year, basing the contention on sec. 70 of the 1842 Act, which does not speak as to repayment, but allows reduction of the assessment, on proof of voids before the Commissioners.

Charity Property.—Repayment for the three preceding years is allowed for charity property which has been assessed. (See p. 392.)

Schedule B.—If the actual profits of the year are less than the estimated amount which forms the Schedule B assessment, repayment of the difference may be claimed within twelve months of the end of the year of assessment. (See p. 41.)

Schedule D.—On loss made in the current trading year (see p. 359), or reduced profits (p. 371).

Cessation, bankruptcy, death, etc. (See p. 67.)

Bank Interest. (See p. 259.)

Discontinuance, as regards the averages assessed exceeding the actual profits. (See p. 53.)

Commencement, as regards the averages assessed exceeding the actual profits. (See p. 51.)

Schedule E.—Repayment may be claimed when it transpires that the total fees paid or payable for the year are less than the assessment for that year.

Clergymen.—Repayment is made in respect of the following:—

First Fruits, Tenths, Duties and fees on presentation. The basis is the amount paid in the preceding year.

Procurations and Synodals, on the average of the seven preceding years.

Repairs and Fire Insurance premiums of Collegiate Churches, or Chancels of Churches, on the amount expended in the preceding year.

Land Tax.

Parochial Rates on Rent Charge. Amount paid within the year of assessment.

Cost of collection of Tithe where there is a paid agent.

Retrospection. On a Finance Act introducing a concession of, *e.g.*, repayment, the question of retrospective effect arises, but the Board of Inland Revenue have expressed the opinion that such effect does not exist; thus where, as with the extension of time for claiming the earned rates (introduced by the Finance Act (No. 2), 1915 (p. 338)), the repayable period is enlarged from the current year to the three preceding years, the extension is not applied to any year earlier than 1915–1916. Sec. 23 of the Finance Act, 1907, in extending the time for making additional assessments (p. 322) from four months to three years, contained a specific provision against retrospection.

CHAPTER XII

SUPER TAX

The Super Tax, which is an additional Income Tax, and does not affect the latter, was first introduced in the Finance (1909–10) Act, 1910, but the following amended rates were enacted by sec. 10 of the Finance Act, 1915, as amended by sec. 23 of the Finance Act (No. 2), 1915, the former Act applying the rate of 2*s.* 8*d.* to all income over £8000. Super tax applies to all incomes "from all sources," which exceed £3000.

						s.	*d.*
The first £2500						nil.	
		£		£			
For each £1 between		2,501	and	3,000	inclusive	0	10
,,	,,	3,001	,,	4,000	,,	1	2
,,	,,	4,001	,,	5,000	,,	1	6
,,	,,	5,001	,,	6,000	,,	1	10
,,	,,	6,001	,,	7,000	,,	2	2
,,	,,	7,001	,,	8,000	,,	2	6
,,	,,	8,001	,,	9,000	,,	2	10
,,	,,	9,001	,,	10,000	,,	3	2
,,	over	10,000				3	6

The Super Tax only applies to "individuals."

The graduated rates for super tax apply to the actual excess mentioned, thus an income of £5550 would pay, in addition to Income Tax at 3*s.* in the £ for 1915–1916 on the *whole*, Super Tax as follows:—

£		£	*s.*	*d.*
2500	nil			
500 at	10*d.* =	20	16	8
1000 at	1*s.* 2*d.* =	58	6	8
1000 at	1*s.* 6*d.* =	75	0	0
550 at	1*s.* 10*d.* =	50	8	4
£5550		204	11	8
Income tax at 3*s.* in the £ on £5550 =		832	10	0
Total tax	=	£1037	1	8

This total tax equals a uniform rate in the £ of 3*s.* 8·8*d.*, including Income Tax.

The following table shows actual rates apart from Income Tax:—

£	Rate.	£	Rate.
3001 . . .	3·4*d.*	7000 . .	12·2*d.*
4000 . . .	4·8*d.*	8000 . .	14·4*d.*
5000 . . .	7·4*d.*	9000 . .	16·5*d.*
6000 . . .	9·8*d.*	10000 . .	18·7*d.*
		100000 . .	39·6*d.*

Commissioners.—The Super Tax is not within the purview of the District Commissioners, being controlled solely by the Special Commissioners.

Declaration of Liability.—Sec. 72 (3) of the Finance (1909–10) Act, 1910, enacts that it shall be the duty of every person liable to Super Tax, to give notice thereof to the Special Commissioners before the 30th September in each year, under a penalty of £50 with a further penalty of £50 for each day the failure continues after judgment for the penalty has been given.

A notice is annually inserted in the *London Gazette*, requiring the declaration.

The provisions of the Income Tax Acts are made applicable to Super Tax.

Married Women.—See p. 267.

Death during the Year.—Sec. 6 of the Finance Act, 1912, provides that on the death of a person liable to Super Tax, the proportionate part of the year's Super Tax, subsequent to death, shall not be payable.

Additional Assessments.—Under sec. 72 (7) of the 1909–10 Act, additional assessments may be made in respect of the three preceding years.

Calculation of Total Income.—The total income is that from all sources for the *preceding* year "*as estimated for the purposes of exemptions or abatements under the Income Tax Acts*" (p. 334), but the following deductions are allowable by sec. 66 of the Finance (1909–10) Act, 1910.

(1) Full repairs, etc., of property assessed under Schedule A, so far as such repairs are permitted to be deducted in arriving at the net Schedule A assessment (p. 27).

(2) Life Insurance Premiums allowable (p. 343).

(3) In the case of a person in the service of the Crown abroad, such necessary expenses as the Treasury may allow.

Income chargeable with Income Tax by deduction, is income for the year "in which it is *receivable*, and any deductions allowable on account of any annual sums paid out of the property or profits of the individual shall be allowed as deductions in respect of the year in which they are payable, notwithstanding that the income or the annual sums, as the case may be, *accrued in whole or in part before that year.*"

This provision is of debatable construction as, if the word "receivable," read with the words as to accrual, fixes the income as that which could have been *received* in the year had the recipient so desired, an inequity is created in that, on *e.g.* a distribution of accumulated dividends which have been accumulating for many years, a person may be liable to Super Tax whereas his ordinary average income may be considerably below the Super Tax limit. The intentions of the framers of the section may have been merely to create a distinction between Super Tax and Income Tax. With the latter dividends are taken, in the hands of the recipient, as being income for the period during which the profits out of which they are paid, accrued, a course which is necessitated by the fact that dividends are a portion of the profits, and any Income Tax deducted from such dividends is Income Tax paid on behalf of the recipient. This method, which introduces complications in division of a dividend between two years, is unnecessary with Super Tax, as there is no connexion whatever between the latter and the profits.

Moreover, the word "receivable" has no technical meaning in the sense of referring to the *declaration* of dividends, and aggregable income for Income Tax purposes is "annual" income, whereas, *e.g.*, accumulated dividends are not.

For 1914–15 the Special Commissioners allowed an all-round addition of one-twelfth of the net dividends as being "most nearly in agreement with the amount of Income Tax deducted from the gross income."

Income Tax Assessments Binding.—In *Brooks* v. *Inland Revenue Commissioners*, [1915] H. L. (*a*), it was held that, for the purpose of arriving at assessments to Super Tax, the profits from a business need not be taken as those fixed for Income Tax purposes by the District Commissioners, and that the taxpayer may prove what his income was for the preceding year. Sec. 18 of the Finance Act, 1915, however, specifically overrules this by providing that when an Income Tax assessment has become final and conclusive, that assessment shall be final for Super Tax for the following year, and no adjustment on account of diminution of income or loss (which covers sec. 133 (p. 371), and the 1890 Act (p. 359)), shall operate for Super Tax unless such adjustment has previously been made for Income Tax purposes.

Sale of Business.—In *Bartlett* v. *Commissioners of Inland Revenue*, [1914] (*b*) the appellant was assessed to Super Tax for the year 1909–10 on the profits of his business for the year 1908–9. The business was sold on the 28th December, 1908, and the portion of the average assessable profit from 6th April to 28th December, 1908, was the amount adopted. It was held that the Super Tax assessment was correctly made, and that sec. 24 (3) of the Finance Act, 1907, relating to Discontinuance (p. 53) did not apply.

Farming Losses.—In *Hill* v. *Inland Revenue Commissioners*, [1912] (*c*), it was held that a person assessable to Super Tax may claim deduction in respect of farming losses, although he had not so claimed within six months of the end of the preceding year of assessment within sec. 23 of the Customs and Inland Revenue Act, 1890 (see p. 359), to be allowed the

(*a*) A. C. 478; 84 L. J. K. B. 404; 112 L. T. 523; 31 T. L. R. 89.
(*b*) 137 L. T. 186.
(*c*) S. C. 1246; 49 Sc. L. R. 960.

loss for Income Tax purposes, and he could claim the deduction for Super Tax purposes even though the claim was not made within six months of the end of the preceding year. This case was also overruled by sec. 18 of the Finance Act, 1915 (*ante*).

Widow's Annuity.—In *re Crawshay's Settled Estate* (1915), an annuity of £1500, free of all deductions except Income Tax, was appointed by a deed poll under a power of appointment given to the husband of the recipient under his father's will. In a codicil to the husband's will the widow was granted, during widowhood, such an annual sum as, together with the income for the time being received by her under the appointment, was to make an annual sum of £2000 clear of all deductions including Income Tax. Under a second codicil the £2000 was increased to £2500 clear of all deductions including Income Tax. The widow was liable to Super Tax, and it was contended that the trustees should pay such Super Tax out of the testator's residuary estate or otherwise. It was held that the annuity was free from all deductions for which the trustees were accountable, and that the widow, being accountable for Super Tax, cannot require the trustees to pay it.

Partnership.—See p. 334 for ascertainment of partnership income for Super Tax.

THE FOLLOWING REGULATIONS HAVE BEEN MADE BY THE COMMISSIONERS OF INLAND REVENUE IN PURSUANCE OF SEC. 72 (8) OF THE FINANCE (1909–10) ACT, 1910.

The Special Commissioners shall serve a notice on every person required by them to make a return of his total income from all sources. Such notice shall be in the form hereto attached or in such amended form as the Commissioners of Inland Revenue shall approve.

On the making of an assessment by the Special Commissioners they shall cause notice to be served as hereinafter mentioned on the person assessed of the amount of the assessment and of the duty charged thereon.

All liability to the Super Tax shall be assessable at the office of the Special Commissioners, London, and appeals shall be heard in London, Edinburgh, and Dublin, and at such other towns as the Commissioners of Inland Revenue may direct.

A person aggrieved by an assessment made upon him shall at any time within twenty-eight days from the date of the service of the notice of such assessment, or within such further time as the Special Commissioners shall allow, be entitled to give notice to the Special Commissioners of his intention to appeal to them against the assessment, and every such notice shall specify the grounds of appeal.

The super tax payable shall be remitted by the person assessed to the Accountant-General of Inland Revenue, at his office, Somerset House, London, on or before the 1st January in each year.

Any notice required to be served on any person under these regulations may be either delivered to such person or left at his usual or last known place of abode, or sent by post by (prepaid) registered letter addressed to such person at his usual or last known place of abode, and such service shall be deemed to be sufficient service for the purpose of these regulations.

As the ordinary provisions of the Income Tax are made applicable to Super Tax they are not repeated in this Chapter.

Example.—The following example for 1915–16 assessment shows the constitution of assessment to Super Tax. Assume that a person has the following sources of income and pays an annual Life Insurance premium of £450.

(*a*) *Profits of trade*, £2600. The average of the three years ended at such date in the year to 5th April, 1914, as the Accounts are usually made up to. This amount would also form the Income Tax assessment for 1914–15.

(*b*) *Property*, £560 net income in the year to, *e.g.*, 31st March, 1915. The basis adopted for Super Tax is the

net Schedule A assessments, *i.e.* the gross less allowances for repairs, etc. (p. 27). For 1914–15 it is provided by sec. 3 (2) of the Finance Act, 1914—which introduced an allowance for repairs under Schedule A in excess of the one-sixth— that, although the income of the preceding year has to be taken, the deduction for repairs, etc., may be the full allowance permissible under the said Act, irrespective of the restricted allowance which was operative in 1913–14. Assuming that the Schedule A assessments were £1000, allowances for repairs, voids, etc., actually admissible, £400, and that Mortgage interest of £200 was payable in 1914–15, the aggregable income for Super Tax would be £400. The income actually received in the year does not coincide with the statutory income as the repairs' allowance (additional to the one-sixth and one-eighth is calculated on the average of the five preceding years) (p. 27). The Schedule A is not *solely* applicable as the measure of the income from property, as when, *e.g.*, a tenant has a beneficial occupation — as shown by his rent being less than the net Schedule A—part of the Schedule A has to be *borne* by the tenant exactly as if he were owner of that portion of the premises represented by the difference between the Schedule A and the rent. It is thus obvious that to compel the owner to include the full Schedule A, and the tenant the difference in question, would constitute double assessment which in the House of Lords in *Sugden* v. *Leeds Corporation*, [1913] (p. 278) was held to be insupportable.

(*c*) *Dividends and Interests*, £1850 receivable in the year 1913–14 before deduction of Income Tax.

The total income for Super Tax would therefore be as follows:—

(*a*)	£2600	
(*b*)	400	
(*c*)	1850	
	4850	
less	450	Life Insurance premium
	£4400	

The applicable rates in the £ would be :—

£		£	s.	d.
2500			nil.	
500 at	10d. =	20	16	8
1000 at	1s. 2d. =	58	6	8
400 at	1s. 6d. =	30	0	0
£4400		£109	3	4

War Provisions. Under sec. 13 (2) of the Finance Act, 1914 (Session 2), it may be claimed for 1914–15, on proof that the actual income from all sources is or will be less than two-thirds of the Super Tax assessment, that payment be postponed until 1st January, 1916, or such other date as Parliament may determine, of Super Tax on the difference between the actual income of the year and the assessed income. This relief is continued for 1915–16 by sec. 20 of the Finance Act, 1915, with the postponed date of 1st January, 1917, while any Super Tax postponed for 1914–15 may be further postponed to 1st January, 1917, if it is proved to the Special Commissioners that the actual total income in 1915–16 is or will be less than two-thirds of the 1914–15 assessment.

Where an individual has, in connexion with the present war, served during the year in the military or naval forces of the Crown at home or abroad, or in Red Cross or ambulance work abroad, and his total income for the year of assessment is less than that of the previous year, the Super Tax assessment is to be based on the former, and repayment may be claimed if necessary.

CHAPTER XIII

EXCESS PROFITS DUTY

The tax on excess profits made during the war, introduced by the Finance (No. 2) Act, 1915, and termed "Excess Profits Duty," is, broadly, an appropriation by the State of half of the difference between (*a*) the average profits prior to the war, and (*b*) the average profits during the continuance of the war, whether such difference results from the existence of war or not. The liability is arrived at by fixing a pre-war standard of profits and deducting it from the profits shown by the accounts for trading periods ending after the commencement of the war—4th August, 1914—irrespective of when such periods commence, and there is provision for ascertaining the average "war profits" by setting off "war losses" or reduced profits. In the fixing of the pre-war standard, wide discretionary powers are vested in a Board of Referees which is composed mainly of persons of considerable commercial experience who form an independent and unbiassed tribunal.

Concerns Chargeable.

The duty extends, by sec. 39, to all trades or businesses, whether continuously carried on or not, of any description carried on (*a*) in the United Kingdom, or (*b*) abroad by any person ordinarily resident in the United Kingdom, and by sec. 43 to mineral royalties and wayleaves. There is, therefore, no liability as regards "residence" when Income Tax does not apply. The following exceptions are provided for:

(1) Husbandry *in the United Kingdom*.

(2) Offices and employments.

(3) Professions where the profits are dependent mainly on personal qualifications *and* where capital expenditure is negligible.

There is, therefore, no liability on, *e.g.*, directors of public companies who have received increased fees owing to the expansion of trade occasioned by the war, but it is statutorily provided (p. 416) that such remuneration cannot be deducted by the company in greater amount than prior to the war except with the Board of Inland Revenue's consent, so that, in effect, such increases may be chargeable, but on the company only.

Sec. 39 expressly includes (*a*) the case of any person taking commissions in respect of transactions or services rendered, and (*b*) any agent of any description not being a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not depending on business done or any other contingency.

The duty extends, *e.g.*, to co-operative societies and other societies registered under the Industrial and Provident Societies Acts. The Fourth Schedule provides in Part I. (9) a special method of arriving at the liability of such societies by which the duty is based on the sum by which the profits per member for the accounting period, including any surplus arising from transactions with members exceed the like profits per member in the previous trading year or years adopted as the basis of the pre-war standard, multiplied by the number of members in the accounting period.

ASSESSMENT.

The Board of Inland Revenue makes the assessment, but there is a right of appeal to the local Commissioners (p. 2) or the Special Commissioners (p. 2), and the rules applicable to those appeals are given in the Board's Regulations at p. 427.

Returns of pre-war profits or "war" profits are required to be made within two months of requirement, and also "such

other particulars" as the Board may require. Any person engaged in trade during any of the pre-war years may be required to return even though he has not been connected with the business since 4th August, 1914.

Basis of Profits.

The basis of calculation of profits is to be the same for the "war profits" period, termed the "accounting period," as for the pre-war profits period termed the "pre-war standard," and by sec. 40 the profits are to be determined separately for the Duty, but on the same principles as the profits "of the trade or business are or would be determined for the purpose of Income Tax" subject to the provisions of the Fourth Schedule of the Act which enunciates the following rules:—

1. Profits shall be *actual* profits in the period in question, not *average* profits.

(2) Deduction *shall* be allowed of the following items, which are prohibited for Income Tax except (*f*):—

(*a*) Interest on money borrowed for trading purposes.

(*b*) Rent.

(*c*) Royalties.

(*d*) Other purposes where tax is deducted (p. 387) but not including the case of distribution of profits such as by dividends.

(*e*) Profits from lands and premises (p. 93).

(*f*) Foreign or Colonial Excess Profits Duty or similar Duty.

(3) The following items are only to be allowed as allowable under the Income Tax Acts *and*, if allowed, only of such amount as the Board of Inland Revenue considers to be reasonably and properly attributable to the year or accounting period.

(*a*) Wear and tear (p. 159).

(*b*) Expenditure of a capital nature for renewals.

(*c*) Expenditure on development of the trade or business.

(*d*) Other expenses in connection with the trade or business.

(4) Deduction shall *not* be allowed for the payment of or liability to Income Tax or Excess Profits Duty, nor in respect of any transaction which has artificially reduced profits, such as the distribution of profits to avoid the unearned rate, as at p. 342.

(5) The remuneration of directors, managers and persons concerned in the management shall not exceed the amounts allowed in the last trading year ending before 4th August, 1914, unless the Board of Inland Revenue otherwise directs, owing to the following circumstances:—

(*a*) Any special circumstances.

(*b*) The remuneration of any managers or managing directors depending upon the profits of the trade or business.

(6) A subsidiary company shall be treated as a branch of the parent company, and a joint assessment made when both carry on the same business and when the latter company owns, either in its own name or that of a nominee, the whole of the ordinary capital of the former or so much of that capital as a single shareholder may legally hold.

(7) When the net result of the three last pre-war years has been a loss and part of the "war profits" are used to extinguish that loss, a deduction may be made from the war profits of the profits so applied. This only attaches when the pre-war standard is a capital percentage (p. 422). When, *e.g.*, the profits are as under and the trading year ends on 31st December, the result of the provision is as shown:—

	Profits. £	Losses. £
1911	2000	—
1912	—	6000
1913	2000	—
1914	8000	—

The three pre-war years would, therefore, show a net loss of £2000 and the "war profits" of the accounting period to 31st December, 1914, would thus be reduced by that loss to £6000.

(8) Income from investments is to be excluded except in the case of insurance and other concerns whose business is principally the making of investments. When, therefore, the income is to be *included* the following rules apply :—

(*a*) Any variation in the value of the investments which appears to the Board of Inland Revenue not to be due to a variation in profits shall also be included ; and

(*b*) Where the income has been derived from profits in respect of which any payment or repayment (p. 419) of the duty has been made, such deduction or addition shall be made in computing the profits as will make proper allowance for that payment or repayment.

(9) Deduction shall be allowed, in the case of a local authority carrying on trades or businesses, of the total amount which is required to be raised by them out of rates or otherwise for sinking fund purposes in connexion with those trades or businesses.

(10) Contracts extending into two or more "accounting periods," which are only partially performed in one of such periods shall, unless the Board of Inland Revenue otherwise directs in special circumstances, be divided between the periods in which it is performed, in the proportions determined by the portions performed in the respective periods.

The provisions may, by sec. 40 (3), be modified on application of the taxpayer to the Board of Inland Revenue in the following cases, while the matter may, at the taxpayer's option, be subsequently referred to the Board of Referees :—

(1) Change in constitution of a partnership.

(2) Postponement or suspension, owing to the war, of renewals or repairs.

(3) Exceptional depreciation or obsolescence due to the war of assets used in the trade.

(4) Necessity of provision of special plant, owing to the war, when such plant will not be required for the particular trade after the war.

(5) Any other special circumstances specified in regulations made by the Treasury.

BASIS OF ASSESSMENT.

The first £200 of any excess profits is exempted and the assessment made on 50 per cent. of the difference between the war profits and the pre-war profits, thus with a war profit of £5000 and a pre-war standard of £3500 the assessment would be as follows:—

	£
War profits	5000
Less exemption	200
	4800
Less pre-war standard	3500
	50%)1300
Duty payable	£650

Two values are introduced, the "accounting period" and the "pre-war" standard."

Accounting Period.—The "accounting period" is defined in sec. 38 as being the period for which the accounts have been made up, and it is to end after 4th August, 1914, and before 1st July, 1915, the latter date being fixed to avoid touching the case of concerns controlled under the Munitions of War Act, 1915, which Act did not commence to operate until after that date. These concerns are specially dealt with, *from the date of control*, by the State appropriating the excess over a pre-war standard based on the average profits of the last two pre-war trading years plus one-fifth of such standard. The Excess Profits Duty, therefore, treats *all* concerns, and, on its re-enactment for 1916–17, controlled concerns will be specifically provided for.

The Board of Inland Revenue is authorized to prescribe the period (not being less than six months or more than a year ending on such date as the Board determine) of the "accounting period" in the following cases:—

(*a*) When the accounts have not been made up for any definite period.

(*b*) When the *usual* period has not been adopted.

(*c*) When a year or more has elapsed without accounts being made up.

The accounts, must, therefore, be made up to the *usual* dates, and if the period is less than a year the exemption of £200 and the pre-war standard are proportionately reduced.

Total War Profits.—As enacted by sec. 38 (3), which will no doubt be re-enacted annually during the continuance of the duty, the war profits for the *whole* period of the war will be treated as an entity and the Duty only paid on the total result. The sub-section provides that if in any "accounting period" ended after 4th August, 1914, there has been a loss or the profits have not reached the point of liability, *i.e.* the pre-war standard plus £200, an adjustment is to be made, by repayment or otherwise, so that the total duty paid during the whole period, *i.e.* from the first accounting period to the one in question may "accord with his profits or losses during that period." This may be demonstrated by the following, the pre-war standard being assumed as arrived at on the basis at p. 422.

	Profits.	Losses.
	£	£
Year to 31st December, 1914 .	4000	—
" " " 1915 .	—	600
" " " 1916 .	3000	—

Pre-war standard, £1000.

1915–16.

	£
Profits to 31st December, 1914	4000
Less exemption	200
	3800
Less pre-war standard	1000
	50%)2800
Excess Profits Duty . . .	£1400

1916–17.

Loss to 31st December, 1915, £600.

Point of liability = £1000 + £200 = £1200, therefore there is a deficiency of £1200 - £600 = £600. Duty was paid for 1915–16 on £2800, so that the duty for that year is repayable except as to that on £1000 shown as follows:—

	£
Profits 2 years to 31st December, 1915 .	3400
Less 2 „ exemptions	400
	3000
Less 2 years pre-war standards . . .	2000
	50%)1000
Total Duty payable . . .	£500

There is thus repayment of £1400 − £500 = £900.

1917–18.

	£
Profits to 31st December, 1916 . . .	3000
Less exemption	200
	2800
Less pre-war standard	1000
	50%)1800
Excess Profits Duty . . .	£900

The result is as follows:—

	£
Profits 3 years to 31st December, 1916 .	6400
Less 3 „ exemptions	600
	5800
Less 3 „ pre-war standards . .	3000
	50%)2800
Total Duty for whole period =	£1400

The duty actually paid totals £1400 as follows:—

	Paid.	Repaid.
	£	£
1915–16	1400	
1916–17		900
1917–18	900	
	2300	
	900	
	£1400	

New Capital.—When the capital during the "accounting period" is, *e.g.*, larger than that during the pre-war period the latter does not form a fair comparison, as part of the increased profits of the accounting period are due to such capital, therefore sec. 41 provides that the war profits shall be decreased in accordance with increased capital and increased in accordance with decreased capital so as, in effect, to place the pre-war and war periods on equal footings in regard to capital.

When capital has been increased during the "accounting period" the statutory percentage on such increased capital (as at p. 422) is to be deducted, but the measure of a variation in capital is to be the difference between (*a*) the average capital in the pre-war trading years adopted in fixing the pre-war standard (p. 422), and (*b*) the average capital during the accounting period. The same principle applies to decreased capital. When, however, the pre-war standard is not based on profits but on capital, as at p. 422, the variation is the difference between (*a*) the capital at the end of the last pre-war trading year and (*b*) the average capital of the "accounting period." The Act does not prescribe *average* capital for the "accounting period," but allows separate adjustments for individual increases or decreases in the period. The results are the same provided that there is no change of ownership during the period.

The following example shows the effect of the provision:—

	£
Capital at 1st January, 1910 . . .	10,000
,, 30th June, 1912	15,000
,, 30th September, 1913 . .	10,000
,, 30th June, 1914	20,000

The increase would, therefore, be as follows, assuming that 1911 and 1912 are the two years adopted in determining the pre-war standard :—

Accounting Period Average.	£	£
	10,000	
Add ½ year @ £10,000 increase =	5,000	
		15,000
Pre-war Standard Average.		
1911	10,000	
1912	10,000	
Add ½ year @ £5,000 increase =	2,500	
	2)22,500	
		11,250
Statutory Increase of Capital .		£3,750

If the statutory capital percentage (*post*) is eight the profits of the "accounting period" to 31st December, 1914, would be reduced by £300.

Pre-war Standard.—The pre-war standard is, by sec. 40, to be the average profits of two of the three last pre-war trading years selected by the taxpayer, so that two best years are adopted. If, however, the said average is less than a percentage on the capital of the business as at the end of the last pre-war trading year, *i.e.* at 31st December, 1913, when the calendar year is the trading year, that capital standard may be substituted. The applicable percentage is determinable for each class or subdivision of a trade by the Board of Referees as at p. 425. A *primâ facie* percentage of six for a company or other bodies corporate and seven for other trades or businesses is prescribed by sec. 40 (2).

The last pre-war trading year is defined as meaning the *year* ending at the end of the last accounting period before

5th August, 1914, and the three last pre-war trading years means the three years ending at the three corresponding times.

The Fourth Schedule to the Act provides the following rules:—

(1) The profits shall be computed on the same principles as are the profits of the "accounting period."

(2) If the "accounting period" is less than a year the pre-war standard is to be reduced accordingly.

(3) In the case of abnormal depression of trade during the last three pre-war trading years the pre-war standard may be calculated on any four of the last six years if the average of the last three years is at least 25 per cent. less than the average of the three years preceding those three years. The matter is demonstrated as follows, the trading year being assumed as to 31st December.

	Profits.		
	£		£
1908 . . .	600	1911 . . .	800
1909 . . .	800	1912 . . .	400
1910 . . .	1000	1913 . . .	200
	3)2400		3)1400
	£800		£466

The minimum of 25 per cent. decrease is thus obtained and the pre-war standard would be based on the four best years as follows:—

	£
1908	600
1909	800
1910	1000
1911	800
	4)3200
	£800

The ordinary standard would be £500, based on 1911 and 1913.

New Businesses.—The Schedule provides as follows for the cases of businesses commenced since the beginning of the three pre-war years.

(1) When there are only two pre-war trading years the standard is the average of those two years or, at the taxpayer's option, the last of those two years.

(2) When there has only been one pre-war trading year the standard is the amount of those profits.

(3) When there has not been one pre-war trading year the standard is to be the applicable capital percentage on the average capital employed during the accounting period.

A change of ownership since the commencement of the three last pre-war trading years is to be treated as a new business unless the taxpayer claims that the business should be treated as a "succession" (p. 65).

The Fourth Schedule provides that when a trade or business is confined to the management of any particular assets but there is power to substitute other assets, the substitution shall not constitute a change of ownership. Where the substitution has been by sale of assets and the purchase of other assets the capital is only to be increased or decreased (p. 421) by the difference between the price of the assets purchased and the price obtained for the assets sold, and the capital of the purchased assets is to be estimated on the same basis for all matters. This provision refers *inter alia* to shipping companies and prevents, *e.g.*, a single ship company (p. 50) from selling its ship at a very inflated price owing to the war and being classed as a new business with a pre-war standard calculated on capital to the amount of the selling price.

Definition of Capital.—Capital is defined in Part III. of the Fourth Schedule as follows:—

1. The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

(*a*) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to

any deductions for wear and tear or replacement, or for unpaid purchase money; and

(*b*) so far as it consists of assets being debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income tax purposes; and

(*c*) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business, subject to any proper deductions for wear and tear or replacement.

Nothing in this Part of this Schedule shall prevent accumulated profits employed in the business being treated as capital.

2. Any capital the income on which is taken into account for the purposes of Part I. of this Schedule, and any borrowed money or debts, shall be deducted in computing the amount of capital for the purposes of Part III. of this Act.

3. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where a trade or business has been converted into a company and the shares in the company are wholly or mainly held by the person who was owner of the trade or business, no value shall be attached to those shares so far as they are represented by goodwill or otherwise than by material assets of the company unless the Commissioners of the Inland Revenue in special circumstances otherwise direct. Patents and secret processes shall be deemed to be material assets.

BOARD OF REFEREES.

The Board of Referees (p. 422) is empowered by sec. 12 to increase the *prima facie* capital percentage in the following cases:—

(1) Any class of trade or business.

(2) Any subdivision of a trade or business based on any special feature or on locality.

The Board may also calculate the percentage by reference to some factor other than capital or to some additional factor when the capital actually employed in the trade or business is, owing to the nature of the business, small compared with the capital necessarily at stake.

In the case of capital employed for the purpose of the manufacture of war materials or for munitions work which could not be expected to be wholly remunerative except in time of war and where the business has been wholly or mainly carried on for the said purpose, the pre-war standard may be altered.

Applications to the Board of Referees have to be made through the Board of Inland Revenue.

Mineral Rights. The Duty also extends, by sec. 43, to mineral royalties and wayleaves when they are not part of the assets of a trade or business and where the rent varies according to the price of the minerals. The duty is to be added to the Mineral Rights Duty introduced by the Finance (1909–10) Act, 1910, and it is to be 50 per cent. of the difference between the rent payable in any working year ending after the commencement of the war and the pre-war standard of the rent. The latter standard is the average of any two of the three last pre-war rent values selected by the taxpayer. When the minerals have not been let throughout those three years and if there are no proper data available, the Board may fix the values. "Pre-war rent value" for a year is defined as being the sum to which the rent for the accounting year would amount if the rent, so far as variable according to price, were based on the average prices governing the payment of the rent in that year.

Payments in an "accounting year" to a superior lessor are to be treated as a deduction from the rent payable to the lessee, and the pre-war rent values are to be reduced accordingly, as also with Increment Value Duty.

Notice of Liability.—Sec. 11 requires a person liable to Excess Profits Duty to give notice to the Board of such liability before 31st January, 1916, and liquidators of companies being wound up at or after the commencement of the Act are to give notice of liability, while, when a company is wound up after the commencement of the Act 23rd December, 1915, and before 1st July, 1916, and there would be liability if the duty were extended to periods to the latter date, the liquidator shall give notice to the Board and set aside to meet the liability such sum as the Board directs.

REGULATIONS PRESCRIBED BY THE COMMISSIONERS OF INLAND REVENUE UNDER SEC. 45, SUB-SEC. (7), OF THE FINANCE (No. 2) ACT, 1915 (5 & 6 GEO. 5, c. 89).

1. Subject to the express provisions of the Act and these Regulations, the Sections of the Income Tax Acts enumerated in the Schedule to these Regulations shall, with the modifications therein described, apply to the assessment and collection of excess profits duty and the hearing of appeals in connexion therewith.

2. If in any case any person required by law to make a return fails to do so, or if the return made by him appears to the Commissioners of Inland Revenue to be incorrect or insufficient, the Commissioners may, without prejudice to the enforcement of any penalty which may have been incurred, make an assessment of excess profits duty according to the best of their judgment.

3. Notice of an assessment shall be served on the person charged or on the person in whose name he is charged.

4. A notice of assessment under the Act may be delivered to the person on whom it is intended to be served, or served upon him by post.

Service by post in this regulation shall have the same meaning as in the Interpretation Act, 1889.

5. Any person dissatisfied with the amount of any assessment made upon him may at any time within thirty days from the date of the service of notice of assessment, or within such further time as the Commissioners of Inland Revenue may allow, give notice to the Surveyor of Taxes named in the notice of assessment of his intention to appeal against the amount of the assessment, and every such notice shall specify the grounds of appeal and, in England, Scotland and Wales, whether the appellant desires that the appeal shall be heard by the General Commissioners or the Special Commissioners.

6. With reference to any notice of appeal and to the hearing of an appeal, the General or Special Commissioners as the case may be, shall, subject to the provisions of the Act, and to any Regulations made thereunder, have all such powers in relation to any matter of appeal as are possessed by them in relation to notices of appeal and the hearing of appeals under any Act for the time being in force relating to income tax. The General or Special Commissioners shall certify in writing to the appellant and to the Commissioners of Inland Revenue after determining any appeal their decision and the amount, if any, by which any assessment has been thereby altered.

7. The Commissioners of Inland Revenue may be represented on the hearing of an appeal by any person nominated in that behalf by them, and any person so nominated shall have the same powers with reference to appeals as may for the time being be exercised by a Surveyor of Taxes with reference to appeals relating to income tax.

8. A Surveyor of Taxes may for any purpose in connexion with the assessment and collection of the duty and the hearing of appeals make use of or produce in evidence any returns, correspondence, schedules, accounts, statements, or other documents to which he has had or may have lawful access for the purposes of income tax, and shall have the same right to examine all accounts, schedules and statements furnished to the General or Special Commissioners as he has in the case of appeals relating to income tax.

9. Any barrister or solicitor or member of an incorporated society of accountants may be heard by the General or Special Commissioners on an appeal.

10. No Commissioner interested in his own right, or in the right of any other person, in any matter under appeal shall take part in or be present at the hearing or determination thereof.

11. The Commissioners of Inland Revenue may make additional assessments in any case where they deem it necessary at any time within three years from the date of the first assessment:

Provided that no such additional assessment shall be made in any case where an assessment has been reduced by the General or Special Commissioners upon an appeal or by any Court by which an appeal has been re-heard.

12. Any notices required to be given to the Commissioners of Inland Revenue may be given either to the Commissioners at their principal office in London, or to the Surveyor of Taxes acting for the district in which the person giving such notice resides or carries on business.

13. In these Regulations, unless the context otherwise requires, the expression "Surveyor of Taxes" means a Surveyor as defined by the Taxes Management Act, 1880, and "the Act" means the Finance (No. 2) Act, 1915.

By order of the Commissioners of Inland Revenue.

SCHEDULE.

Income Tax Act, 1842 (5 & 6 *Vict.*, *c.* 35):—

Section 40.
„ 41, save in so far as it relates to a married woman.
„ 44.
„ 51, save in so far as it relates to a married woman.
„ 100, Schedule D, Rules applying to the first and second cases of that schedule, Rule 3, down to and including the words "and no separate statement shall be allowed in any case of partnership."

Taxes Management Act, 1880 (43 & 44 *Vict.*, *c.* 19):—

Section 15, sub-sections (2) and (5).

„ 55, down to and including the words "the several particulars on which the charge is made."

Finance Act, 1907 (7 *Ed.* 7, *c.* 13):—

Section 22, sub-section (2).

Finance Act, 1914 (4 & 5 *Geo.* 5, *c.* 10):—

Section 10, sub-section (2).

Finance (No. 2) *Act*, 1915 (5 & 6 *Geo.* 5, *c.* 89):—

Section 31.

INDEX

ABATEMENTS, 332—339
after setting-off losses, 358, 361, 368
claim for, 310—322, 332—339
employee's contingent interest, 191
gifts, 99
married women, 267—270
minor, 275
only to residents in United Kingdom (with exceptions), 321, 336
repayment, 64, 333
restricted to individuals, 333
shares issued to shareholders, 343
weekly wage earners, 64

ACCOUNTANT,
charges, 305
may represent appellant, 329

ACCOUNTANT AND COMPTROLLER-GENERAL, 12

ACCOUNTS,
commencement to keep books, 304, 371
depreciation, treatment of, 305, 306, 307, 309
examples, 305—307
interest, treatment of, 305—309
new business, 304
precept for, 303
preparation of, 41—43, 52, 297—322
professional persons, 304
rent, treatment of, 305, 306, 309
retail traders, 304
stock, 304, 305
trade associations, 291

ADDITIONAL ASSESSMENTS, 21, 22, 43, 65, 322, 377, 406

ADJUSTMENTS, 357—376
admission of partner, 50, 66, 74
bankruptcy, 67, 403
cessation, 50, 53—55, 67, 72, 74, 78, 403
commencement, 47—53, 65, 76, 303, 316, 357, 367, 371
conversion, 49, 66, 67, 75, 341
death, 50, 66, 67, 403, 406
deprivation of profits, 67, 71, 73
discontinuance, 53—55, 60, 66, 67, 74, 75, 286, 357, 403

ADJUSTMENTS—*continued.*
dissolution of partnership, 50, 66, 403
insolvency, 67
loss, 56, 59, 357
new business, 47—53, 65, 76, 303, 304, 316, 357, 367, 371, 403
reconstruction, 65, 78
specific cause, 49—50, 65—78
succession, 50, 65—79, 361
war, 357, 371—376

ADMINISTRATION, 1—17
principle of system, 16

ADVANCES TO ANOTHER COMPANY, 135

ADVERTISEMENTS, 84, 99, 305

AGENTS,
del credere, 224
entrusted with payments, 318, 355, 356
estate, 285
expenses of, 114
having receipt of profits for foreigners, 217—226
remuneration of, 356

ALIMONY,
deduction of tax from, 267, 268

ALLOWANCES,
voluntary, 99

ALMSHOUSE,
exemption of, 392

ALTERATION OF ARTICLES, 213, 227

ALUM MINES OR WORKS, 55, 316

ANNUAL VALUE,
authority, 93
bank managers, 98
basis, 95
beneficial occupation, 93
clergymen, 98, 148, 334, 349
deduction of, 92—99, 305—307, 308, 317
examples in accounts, 305—307
hotels, 97
partly used as dwelling-house, 96
public houses, 97, 98, 101, 104—108
rent, 82, 95, 96, 148, 201, 204, 273, 305—307, 309, 317, 334, 349

ANNUITIES AND OTHER ANNUAL PAYMENTS, 46, 63, 82, 256, 262, 263, 317, 320, 400, 406
guaranteed, 258
retiring, 265, 289
return of amount of, 311
shares of small, 188
small, 188
widow, 406

APPEALS, 23, 65, 71, 300, 323—331
applications are not appeals, 71, 72, 246, 330, 369
cases stated, 331. *See* CASES STATED.
commissioners' discretion, 324
evidence, 328
finality of commissioners' decision, 325
increase of assessments on, 325
may be made to district or special commissioners, 329
professional representation, 329
schedule of particulars, 300—303
super tax, 410
when appellant removed from district, 325

ARMY OFFICER, 347, 374

ARREARS OF TAX. *See* BACK DUTY.

ASSESSMENT,
procedure, 323

ASSESSORS AND COLLECTORS, 1, 13—15
appointed by commissioners, 13
banking arrangements, 15
death of collector, 14
deliver notices of charge, etc., 323, 324
oath of secrecy, 9
remuneration, 15
security of collector, 14
supplies forms, 316, 318
weekly wage earners, 65

ASSETS,
sale of, 142

ASSOCIATION,
deductions, 291
trade protection, 290

ASSURANCE PREMIUMS. *See* LIFE INSURANCE PREMIUMS.

ASYLUM,
exemption of, 394, 398
officers' contributions under Superannuation Act, 348

AVERAGE LOSS, 81

AVERAGE SYSTEM, 37, 38, 47–55, 62, 64, 73, 74, 81, 205, 243, 298, 304, 316, 317, 335, 364
accounts to irregular dates, 49, 52, 53
breakage of, 65
for interest, etc., 265
mines, &c., 55—60
professions and employments, 62
two undertakings, 50

BACK DUTY, 391

BAD DEBTS, 81, 99, 110, 135, 305, 317

BALANCE SHEETS, 173, 297—303
effect on depreciation, 173, 300
interest on loans, 299
law of production, 297—302
reserves, 299

BALLOT AND SALE SOCIETIES, 127

BANK, 140, 207, 222, 265, 355. *See* AGENTS.
charges, 305
interest on war loan exempt, 400
loan, 140
managers, 98, 334, 398
overdraft, 140, 141
sale of assets of, 144
succession to branch, 77

BANK INTEREST PAID, 258, 259, 260, 305
repayment of tax on, 259, 403

BANK INTEREST,
club, 149
compensation levy deposits, 266
deduction of tax when for fixed periods, 266
paid, 258, 259, 260
received, 149, 265, 311, 318

BANKRUPTCY, 67, 403
interest on judgment debt, 265

BARRISTER MAY REPRESENT APPELLANT, 329

BATHS, 281, 399

BEARER BONDS, 213

BENEFICIAL OCCUPATION, 32, 33, 92, 312

BENEFIT MATCHES, 121

BETTING, 62

BOARD OF INLAND REVENUE, 3
circular to clerks to commissioners, 11
detached parishes, 17
district commissioners independent of, 3, 80
may authorize increase in number of commissioners, 4
,, grant increased allowances to clerks to commissioners, 10, 11

BONUS, 101

BOOKMAKERS, 62

BOOKS,
included in Preliminary Expenses, 101, 287
on instalment system, 240
property of Commissioners, 9

BOOT TRADE, 176

BRANCHES OF MULTIPLE SHOP COMPANIES, 86, 99

BREAKING-OPEN ORDER, 379

BREWING, 87, 101—121. *See also* ANNUAL VALUE.
accounts, example of adjustment, 307
agent, expenses of, 114
annual value of Public Houses, 97, 98, 101, 104—108
call of licences, 120
compensation levy, 102, 106, 113—119
damages to customer, 86, 90
depôt, expenses of, 114, 117
depreciation, 176, 307
difference between net Schedule A and rents received, 101, 104, 105, 107, 307
foreign, 208
free houses, 102, 103
goodwill, 106
legal costs, 101, 104, 106, 120
losses on loans, 110
managed houses, 103, 307
moneylending business, 110
new licences, application for, 120
premiums for leases, 108—110
reserves, 307
surrender of licences, 120
tied houses, 19, 101—121, 307
fire insurance premiums, 101, 104, 105, 108, 307
legal costs, 101, 104
licence insurance premiums, 101, 104, 108, 307
licences paid for tenants, 101, 104, 307
rates ,, ,, 101, 104, 307
repairs, 101, 103, 104, 106, 107, 111, 307
Schedule A and rents, 101, 104, 105, 107

BRIDGES, 55, 316

BROKER'S COMMISSION, 121, 158, 194
rents, 281

BUILDING ESTATE,
division of, 142, 143

BUILDING SOCIETIES,
abatements, 128
advances, 122
appropriations, 127
arrangements A, 125, 234
,, B, 126, 234
ballot and sale societies, 127
bank interest, 127
bonuses, 128
certificate of interest, 128

BUILDING SOCIETIES—*continued.*
deduction of tax, 123, 126
dividends, 127
exempt members, 125, 126, 127, 128, 129
fees, 127
fines, 127
friendly societies acting as Building Societies, 128, 234
income, 123
Industrial and Provident Societies acting as Building Societies, 128, 234
interest on advances, 122—127
not charitable, 125
premiums, 127
repayment of tax an interest, 126
Starr-Bowkett Societies, 127
subscriptions for working expenses, 127
Terminable Societies, 122, 127
BURIAL BOARD, 129
interment fees, 129
BURIAL GROUND, 146. *See* CEMETERY CO.

CABLE COMPANIES, 220
CANALS, 55, 130, 316
CAPITAL,
advances to another company, 135
brewery, 110, 120
commutation of salary, 139
contracts, unexecuted, 134
cost-book mines, 275
defective structural condition, 137
definition of, 88, 130, 131, 135
description as capital not conclusive, 130, 137
diminution of, 83, 130
dredging, 134
employed as, 81, 130, 317
„ , in improvement of premises, 81, 130, 317
„ „ „ „ railway line, 137
expenditure of, 130—145
exhaustion of, 131
included in instalments, 263
interest paid to foreign bankers, 140
loss of, 136
parliamentary expenses, 145
pit sinking. *See* MINES.
realization of investments, 145
redemption of lease, 140
sale of assets, 144
„ investments, 197
„ lands, 142
syndicate, 137
wasting assets, 82, 90, 130, 131—134, 162, 272
withdrawn from business, 81, 130, 317

CASE STATED, 2, 71, 116, 117, 118, 201, 325, 329, 376. *See* FINDINGS OF FACT.
limited to appeals, 72, 246, 331, 369
not applicable to amount of depreciation allowance, 159

CASUAL PROFITS, 45, 313, 334

CATTLE DEALERS, 145

CATTLE INSURANCE SOCIETIES, 233

CEMETERY COMPANY, 129, 146, 316
graves spaces, cost of, 146

CESSATION, 53—55, 60, 66, 67, 74, 75, 286, 357

CHALK QUARRY, 55, 146, 287

CHANNEL ISLANDS, 321, 337

CHAPELS,
exemption of, 398

CHARITABLE OR BENEVOLENT SOCIETIES, 233

CHARITABLE SUBSCRIPTIONS, 147

CHARITIES, 392—399, 403
building society not, 125
burial board not, 129
definition, 396

CHILDREN'S ALLOWANCE, 332, 346
claim for, 313, 314, 321, 346
definition, 346
only when resident in United Kingdom (with exceptions), 321, 337

CHURCH DUES, 37

CHURCHES,
exemption of, 398, 403, 404

CLERGYMEN. *See also* SCHEDULE E.
augmentation, 148
books, 349
collection of tithe, 404
communion elements, 148, 349
contributions to assistant's stipend, 147, 349
cost of keeping horse, &c., 148, 349
easter offerings and gifts, 148, 351—353
expenses of, 83, 147, 148, 349
fire insurance premiums, 403
first fruits, 403
grants and free will offerings, 353
land tax, 403
meetings, attendance at, 349
presentation duties and fees, 403

CLERGYMEN—*continued.*
procuration, 403
pulpit supply during holidays, 148
rates, 404
rent or annual value of residence, deduction for, 99, 148, 334, 349
repairs, &c., 403
repayment, 403
retiring annuity, 265
stationery, 349
tenths, 403
visiting, expenses of, 349

CLERKS, NOT ASSESSED QUARTERLY, 64

CLERK TO COMMISSIONERS, 1—12
analogous to magistrate's clerk, 16
appointment, 10
assistant clerk, 10
convenes meetings, 4
issues notices of charge, 323
no fees to be taken, 9
oath of secrecy, 9
remuneration, 10—12

CLUBS, 148—154
bank interest, 149
basis of assessment, 152
exemptions, 154
gate moneys, 151
golf clubs, 149
holiday clubs, 153
limited liability, 153
mutual principle, 149, 150
non-members' fees, 150
receipts, 150
working men's clubs, 233

COAL DUES, 154

COAL EXPORTING PLANT,
depreciation of, 176

COAL MINES. *See* MINES.

COAL OWNERS' ASSOCIATION,
payments to, 155, 272

COLLECTION, 377—380. *See also* DISTRAINT.

COLLECTOR. *See* ASSESSOR AND COLLECTOR.

COLLEGE,
exemption of, 394

COLLEGE BURSAR, 351

COLLIERIES. *See* MINES.

COLONIAL ADVANCES.

COLONIAL INCOME TAX,
deduction of, 201, 204, 231

COLONIAL SECURITIES AND POSSESSIONS. *See* FOREIGN.

COMMENCEMENT, 47—53, 65, 76, 303, 304, 316, 317, 357, 367, 371

COMMISSION, 155, 156, 285, 293

COMMISSIONERS, DISTRICT, 2—10, 325
Additional, 8, 161, 323
analogous to magistrates, 16
applications to, 67
appoint assessors and collectors, 13
appointment of, 3—8
back duty, 345, 346
books property of, 9
ceasing to act, 6
discretionary powers, 1, 3, 10, 72, 80, 151, 160, 172, 324, 369
finality of decision, 325
findings of fact, 71, 72, 80, 92, 113, 116, 118, 119, 144, 159, 170, 227, 230, 251, 285, 325—327
independent of Board of Inland Revenue, 3, 80
Land Tax Commissioners, 3, 4, 5, 7
may adopt equitable construction, 2, 80
meetings outside division, 8
number of, 3, 4
oath of secrecy, 9
qualifications, 6, 7
quorum, 17

COMMISSIONERS, SPECIAL, 2, 15, 16

COMMUNION ELEMENTS, 148, 349

COMMUTATION OF SALARY, 139

COMPENSATION, 305, 306
loss of employment, 292
railway passengers, 87
workmen, 155, 291

COMPENSATION LEVY, 34, 102, 106, 113—119
interest on deposits, 266

CONCILIATION BOARD EXPENSES, 155, 272

CONTINGENT INTEREST OF EMPLOYEES, 191
" " " MINOR, 276

CONTRACTING-OUT UNDER SCHEDULE A., 36

CONTRACTS,
unexecuted, 134
where made, 216, 221, 224, 226, 227, 228

CONTROL OF BUSINESS, 207—210, 227, 230

CONVERSION OF PARTNERSHIP TO LIMITED LIABILITY, 49, 69, 70, 341

CO-OPERATIVE STORES, 155, 232

CO-PARTNERSHIP SCHEMES, 157

COPPER MINES. *See* MINES.

CORPORATION. *See* MUNICIPAL.

COST-BOOK MINES, 275

COTTAGE PROPERTY, 36

COUPON DEALERS, 306, 357

CROWN PRIVILEGE, 399

CROWN SERVICE, 321, 337

DAMAGES, 86, 90, 139, 157

DEAD RENT, 38, 157

DEATH, 50, 53—55, 67, 72, 74, 78, 403, 406

DEBENTURES,
- brokers' commission, &c., 121, 158, 194
- deduction of tax from interest on, 158, 256
- "free of tax" interest, 189
- interest on, 158
- renewal of, 158, 194
- sinking fund to pay off, 258

DEBTS,
- deduction of, 81, 99, 317

DEDUCTIBLE EXPENSES, 79—296
- not capital expenses. *See* CAPITAL.
- restricted to those enumerated, 82

DEDUCTION OF TAX, 33—36, 317, 380—389
- alimony, 267, 268
- bank interest, 266
- cessation of payments, 389
- debenture interest, 158, 256
- dividends, 386, 387
- foreign and colonial securities and possessions, 318, 386
- foreigner, 158, 264
- ground rent, 387
- interest, annuity or other annual payments, 256, 283, 314, 317, 386
- interest, &c., *not* payable out of profits brought into charge, 248, 257, 262, 386
- interest, &c., payable out of profits brought into charge, 248, 256, 261, 262, 387

DEDUCTION OF TAX—*continued.*
interest on judgment debt, 265
interest received from frontage owners, 283
municipal corporations, 386. *See* MUNICIPAL.
on alteration of rates in the £, 380—389
on various subjects of deduction, 385—388
patent royalties, 287, 317
rate of, 383—389
royalties on minerals, 158
shares held by married women, 270

DEER SHOOTING, 44

DEFALCATION OF EMPLOYEE, 159

DEFECTIVE STRUCTURAL CONDITION, 137

DEFENCE OF TRADE RIGHTS, 266

DEMAND NOTES, 377

DEPOT,
expenses of, 114, 117

DEPRECIATION, 159—187, 305, 306, 319
abatements and, 178, 312
additions, 161, 167
allowed by Additional commissioners, 161
amount solely at commissioners' discretion, 159, 165, 170
balance sheets, 158, 298—302
basis of allowances, 164, 179, 319
boot trade, 176
breaking-up value, 167
brewing, 176, 307
capital expenditure, 161
carrying forward of, 161, 162, 174
claim to be included in annual statement, 161, 173
coal exporting plant, 176
collieries, 176
commissioners' findings of fact, 170
deduction on claim to abatement, 178
definition, 159—160
duration of life, 178
,, service, 178
dyers and trimmers, 176
electricity undertakings, 177, 183
engines and boilers, 177
engineers, 176
example of allowance, 165, 305—309
fixtures and fittings, 160, 305
furniture, 160, 234
gas undertakings, 182, 184—187
horses, 162
hosiery, 176

DEPRECIATION—*continued.*
hotels, 160
interest on allowance, 171, 172
lace making, 176
law of allowances, 160—162
leases, 108, 159, 317
light railways, 178—184
looms and spinning machinery, 176
loose tools, 160
loss, 173
mills, flour and paper, 172, 173
motor cars, 175
municipal undertakings, 178—187
not on buildings, 159
obsolescence, 166—167
plant, 172
practice, 162, 172
printing works, 173, 176, 177
renewals, 160, 167, 168
repairs, 160
railway company, 168
revaluation of machinery and plant, 168
scrap value, 166, 171
securities, 172
setting off losses, 364
sewing machines, 177
ships, 170, 172
ship repairing and ship building machinery, 177
spinning machinery and woolcombs, 177
stud farms, 162
succession, 162
time limit for claim, 160
tramways, 169, 177, 178—182, 292
type, 173, 176, 177
under 1890 Act, 173, 364
water undertakings, 182
weaving machinery, 177

DEPRESSION IN TRADE, 75

DESTINATION OF PROFIT IMMATERIAL, 90, 129, 284

DEVELOPMENT EXPENSES, 272

DIAMOND MINES, 226

DIRECTORS' FEES, 69, 70, 73, 307, 312, 341

DISCONTINUANCE, 53—55, 60, 66, 67, 74, 75, 286, 357, 403

DISCOUNTS, 63, 188, 265, 293, 305, 315, 318

DISCRETIONARY POWERS OF COMMISSIONERS, 1, 3, 10, 72, 80, 151, 160, 172, 324, 369

DISSOLUTION OF PARTNERSHIP, 50, 66, 336, 403

DISTRAINT, 378—380
breaking-open orders, 379
committal to prison, 380
costs of, 379
married women's tax, 290
weekly wage-earners, 65

DISTRIBUTION OF INCOME,
no allowance for expenses of, 204

DIVIDENDS, 188, 189, 316, 317, 320, 334, 362
corporation inscribed stock, 188
"free of tax," 189
government stock purchased through post office, 188
savings bank, 63, 188
small, 188
taxed, in accounts, 305, 306, 308, 311
warrants, co-partnership scheme, 156

DOCK DUES, 284

DOCKS, 55, 189, 316

DOCTORS,
accounts may be on cash basis, 304

DOMESTIC EXPENSES, 82, 189, 317, 350

DOMICILE, 201, 229

DOUBTFUL DEBTS, 81, 99, 100, 317

DRAINAGE RATE, 28

DRAINS, 55, 190, 294, 295, 316

DRAUGHTSMEN, NOT ASSESSED QUARTERLY, 64

DRAWINGS OF PARTNERS, 69, 74, 191, 305, 306, 317

DWELLING HOUSE,
deduction for rent, 82. *See also* ANNUAL VALUE

DYERS AND TRIMMERS,
depreciation, 176

EARNED INCOME, 337—343
after setting-off losses, 358, 361, 363, 368
claims, 310—322, 337
definition, 340
married woman, 269
on conversion to limited liability, 341
only when resident in United Kingdom (with exceptions), 321, 336
partner's capital, 341
Schedule B, 43
shares issued to shareholders, 343
trust estate, 341

EASTER OFFERINGS, 148, 351-353

EJUSDEM GENERIS PRINCIPLE, 302

ELECTRICITY UNDERTAKINGS, 131
depreciation, 183, 184

EMBANKING RATE, 28

EMBEZZLEMENT, 191

EMPLOYEES' AGREEMENT, 139
commission, 154

EMPLOYEES' CONTINGENT INTEREST, 191

EMPLOYMENTS, 61, 62

END OF YEAR, 41, 51

ENGINE DRIVERS, 351

ENGINEERING,
depreciation, 176

EQUITABLE CONSTRUCTION, 2, 80

ESTATE AGENT, 285

EVIDENCE ON APPEAL, 328

EXCESS PROFITS DUTY, DEDUCTION OF, 192
accounting period, 415, 417, 423
accounts, 419
additional assessments, 429
agents, 414
appeals, 428
assessment, 414
basis of assessment, 418
„ profit, 415
board of Referees, 425
branch companies, 416
capital, 421, 424, 425
„ expenditure, 415
colonial Duty, 415
commencement, 424
commercial traveller, 414
commissions, 414
concerns chargeable, 413
conversion to limited liability, 425
contracts, 417
co-operative societies, 414
debts, 425
deductions, 415
depreciation, 415, 417
development expenses, 415
directors, 414, 416

EXCESS PROFITS DUTY, DEDUCTION OF—*continued.*
dividends, 415
foreign Duty, 415
goodwill, 425
income tax, principles to apply, 415
industrial and provident societies, 415
interest, 415
investments, 417
lands, 415
limited liability, conversion to, 425
local authorities, 417
losses, 416
managers, 416
mineral rights, 426
municipal undertakings, 417
munitions, 426
new businesses, 424
notice of assessment, 427
,, liability, 427
obsolescence, 417
partnerships, 417
patents, 425
pre-war standard, 415, 422
professional representation, 429
property, 415
regulations, 427—430
renewals, 415, 417
rent, 415
repairs, 417
repayment, 417
returns, 414
royalties, 415
secret processes, 425
shipping companies, 424
subsidiary companies, 416

EXEMPTION. *See also* CHARITIES.
after setting-off losses, 358, 361, 368
cattle Insurance Societies, 233
charitable and benevolent societies, 233
claims, 60, 61, 310—322, 332—339
clubs, 148
Co-operative Societies, 155
crown privilege, 399
foreign profits, 201—216
Friendly Societies, 231—233, 399
,, ,, unregistered, 233, 334
gifts, 99
Industrial and Provident Societies, 232, 399
interest, etc., 400
minors, 276
Money Societies, 233

EXEMPTION—*continued.*
National Health Insurance Funds, 399
only when resident in United Kingdom (with exceptions), 321, 336
private Act, 398
repayment, 64, 333
restricted to individuals, 333
savings banks, 232, 399
securities, war, 356
shares issued to shareholders, 343
Trade Unions, 232, 399
weekly wage-earners, 64
Working Men's Clubs, 233

EXHAUSTION OF ASSETS, 131

EXPENSES OF MANAGEMENT, 194, 196, 243, 244

EXPERIMENTS, 192, 273

EXPERT EVIDENCE, 329

FACT,
findings of, 71, 72, 80, 92, 113, 116, 118, 119, 144, 159, 170, 227, 230, 251, 285, 325—327

FAIRS,
rights of, 55, 193, 316

FARMERS, 39, 40—43, 193, 311, 320
adjustment on loss, etc., 41—43, 359—368, 371

FENCING RATE, 28

FERRIES, 55, 193, 316

FINANCIAL COMPANIES, 193—198, 204, 369
alternate bases of assessment, 194, 211
debentures, 194
expenses of management, 194, 196, 243, 244
interest, 194
,, on colonial advances, 196
mortgage companies, 194
sales of securities, 197
setting-off losses, 369

FINES, 37

FIRE,
loss of stock and buildings, 198

FIRE INSURANCE PREMIUMS, 101, 104, 108, 131, 198, 403

FIRST FRUITS, 403

FISHINGS, 29, 44, 55, 199, 316

FLOOD, 29

FLUCTUATING SECURITIES, 197, 205

FOREIGN, 46, 199—231, 318
abatement, etc., and relief restricted to residents in United Kingdom, 321, 336
agent, del credere, 224
,, entrusted with payment, 318, 355, 356
,, having receipt of profits, 217—226
alteration of articles, 213, 227
average, 203
bank, 207, 222
bearer bonds, 213
branch, 218
breweries, 208
British profits of foreign residents, 216—231
broker, 219
cable companies, 220
case stated, 201
commission agent, 219
Commissioners' findings of fact, 209, 227, 230. *See also* FINDINGS OF FACT.
contracts, where made, 216, 221, 224, 226, 227, 228
control of business, 207—210, 227, 230
deduction of tax. *See* DEDUCTION OF TAX.
deductions, 203, 205
annual payment, 201, 204
foreign or colonial income tax, 201, 204, 231
none for distribution of income or management of trust, 204
repairs, 204
delivery, where made, 216, 217, 226, 228
diamond mines, 226
distribution of income, no allowance for expenses of, 204
domicile, 201, 229, 318
exemption, 199, 200, 313
factor, 218
Financial Companies, 205. *See* FINANCIAL COMPANIES.
fluctuating advances, 205
foreign dividends, 222, 313, 315, 318
foreigner renting house in United Kingdom, 229
foreign profits of British residents, 200—216
gas works, 235
hotel company, 207, 213
house in United Kingdom, 228, 229
insurance companies, 212. *See also* INSURANCE COMPANIES.
interest on temporary advances, 205
investments abroad, 204, 210
issue of loans, 223
management expenses, 194, 196, 205, 243
manager, 218
mariner absent from United Kingdom, 229
mines, 226, 228, 275
minor, possessions of, 276
mortgage companies, 211
non-residents, 218—220, 318
oil-wells, 208

FOREIGN—*continued.*
ordinary investments, 204
owner of foreign business resident in United Kingdom, 209
partner in firm abroad, 210, 211
payment for goods, where made, 217, 223—226, 228
place of assessment, 214
" possessions," definition of, 210
provision companies, 225
railway, 206
receiver of profits, 217, 218
remittances to United Kingdom, 201, 202, 203
rents, 204, 318
deduction for repairs, 204
residence abroad, 199, 202, 204, 216—230, 321, 336
occasional, 199
temporary, 199, 204, 230
when absent from the United Kingdom during whole or part of the year, 228, 230
sole residence in United Kingdom not necessary, 230
returns, 201, 313, 315
repayment, 202, 203
sailor, 229
seaman, 229
securities, stocks, shares, and rents, 201, 315, 318
service abroad, 351
shares held by company in another company, 212
shipping company, 222
temporary advances, 205
" trading " abroad, what constitutes, 205—210, 214
trading *with* a country is not trading *within* a country, 214
trust companies, 212
trust, securities held under, 202, 204
wine merchant, 223
yacht, residence on, 227
yarn, 228

FOREIGN AND COLONIAL INCOME TAX,
deduction of, 201, 204, 231

FOREIGN AND COLONIAL SECURITIES AND POSSESSIONS, 193, 201, 202, 203, 315, 318

FORM 11...161, 173, 298, 309, 310—322

FRIENDLY SOCIETIES, 231—234
acting as Building Societies, 234
exemptions, 231, 399
unregistered, entitled to exemption, 233, 334

"FREE OF TAX" DIVIDENDS AND INTEREST, 188, 262

FRONTAGES,
deduction of tax from interest received from owners, 283

FURNISHED HOUSES,
deductible expenses, 234
letting of, 234
rent, 234

GAME FARM, 143

GASWORKS, 47, 55, 235, 236, 278, 281, 316
deduction of tax from dividends, 236
defective structural condition, 137, 235
depreciation, 182, 184—187
foreign, 235
lighting of streets, 235
municipal, 235
restoration of plant, 123, 235
setting-off losses, 358

GATE MONEYS, 151

GIFTS, 99, 236, 334. *See also* CLERGYMEN.

GOLF CLUBS, 149. *See also* CLUBS.
basis of assessment, 152
gate moneys, 151

GOODWILL, 102, 134, 237

GOVERNMENT PROPERTY, 32

GRATUITY,
retiring, 289

GRAVES, 237

GROUND RENTS,
added back in accounts, 307
deducted on claim to abatement, etc., 310, 311, 320
deduction of tax on paying, 321, 387
,, from annual value, 317

GUARANTEED INTEREST, 258

HARBOUR DUES, 237, 288

HEALTH,
National Insurance contributions, 284
funds, 399

HIRE,
instruments of trade, 142
typewriters, 142

HIRE-PURCHASE SYSTEM, 237—241
books, 240
railway wagons, 237

HOARDINGS, 241

HOLIDAY CLUBS, 153

HOP GROUNDS, 241

HORSE AND CARRIAGE,
expenses of, 147, 349

HORSE RACING, 62

HOSIERY MACHINERY,
depreciation of, 176

HOSPITALS,
exemption of, 392
subscriptions to, 147

HOTEL COMPANIES, 207, 213

HOTELS, 97, 160

IMPLEMENTS,
supply or repair of, 81, 241, 317

IMPROVEMENT OF PREMISES, 242, 317
railway line, 137

INCAPACITATED PERSONS, 379

INCOME TAX,
deduction of, 154, 155, 241, 314, 317, 320, 410
foreign and colonial, 201, 204, 231

INCREASE OF RATES IN THE £, 339

INDEMNITY,
sum recoverable under contract of, 81, 242, 291, 317

INDUSTRIAL AND PROVIDENT SOCIETIES, 232
acting as building societies, 234
exemptions, 232, 399

INFANT. *See* MINOR.

INHABITED HOUSE DUTY, 18, 20

INLAND NAVIGATIONS, 55, 284, 316

INSURANCE, loss recoverable under, 81, 242, 291, 317

INSURANCE COMPANIES, 204, 242—256, 369. *See also* FINANCIAL COMPANIES AND FOREIGN.
alternate methods of assessment, 243, 246
annuities, 248
bonuses, 252
claim to set-off loss on trading against taxed income, 245, 369
commissions, 243

INSURANCE COMPANIES—*continued.*
commutation of salary, 139
fees, 243
fines, 243
foreign companies, 244
foreign securities, 244
investments of, 255
management expenses, 243, 244
mutual, 149, 252—255
profits of, 247
realisation of investments, 248
retention of tax on payment of annuities, 249
reversions, 243
setting-off losses, 369
short term interest, 245
unexpired risks, 247, 250

INSURANCE CONTRIBUTIONS,
national health, 284

INSURANCE PREMIUMS, 27, 101, 104, 108, 131, 198, 307. *See also* LIFE INSURANCE PREMIUMS AND FIRE INSURANCE PREMIUMS.

INSOLVENCY, 67

INSTALMENTS,
purchase by, 121, 237. *See also* HIRE PURCHASE.
payment by, 264, 265

INTEREST,
annual, deduction of, 82, 317
annuities, 82, 263, 265
assessment of, 46, 262—266, 314, 315, 316, 318
bank interest paid, 258, 259, 260, 403
fluctuating, 260
overdraft, 258
repayment of tax on, 259—261, 403
bank interest received, 149, 262, 263, 265, 266, 314, 318
bankruptcy, on judgment debt, 265
basis of assessment, 262
debenture interest. *See* DEBENTURES.
deduction of, 81, 256, 313, 314, 317
deduction of tax on paying interest. *See* DEDUCTIONS OF TAX.
effect of depreciation on interest assessed, 309
limited company's assessment, 309
exemption, 400, 403
guaranteed, 258
instalments, 263, 264
not annual, 63, 123, 265
not paid out of profits brought into charge, 248, 257, 262, 279, 382
on capital, 81, 317, 335
during construction, 257
colonial advances, 196

INTEREST—*continued.*
on compensation levy deposits, 266
corporation loans, 318
depreciation allowances, 171, 172
paid by post office, 188
to foreign bankers, 140
to sinking fund, 258
payable out of profits brought into charge, 63, 248, 256, 259, 260, 262, 264, 279, 317, 382
return of amount, 311, 312, 315, 318, 320
savings bank, 63
separate subject of assessment, 124, 262
short loans, 140, 245, 256, 257, 259, 261
temporary advances, 257
trade interests and discounts, 256
war loan, 63
yearly, 46, 63, 82, 123, 262, 317

INVESTMENTS. *See* REALISATION OF INVESTMENTS.
buying and selling, 142, 143, 144, 145
depreciation of, 172, 197
foreign, 204, 210
of business, 266
realisation of, 45, 143, 144, 145, 197, 247, 334

IRELAND, 2, 40

IRON MINES. *See* MINES.

IRON WORKS, 55, 266, 316

ISLE OF MAN, 321, 337

JUDGMENT DEBT,
interest on, 265

LABOURERS' COTTAGES, 40

LACE-MAKING MACHINERY,
depreciation, 176

LAIRS,
upkeep of, 146

LAKES, 31, 44

LANDLORD'S PROPERTY TAX, 18

LAND TAX,
deduction of, 28, 404

LAW CHARGES. *See* LEGAL COSTS.

LEAD MINES. *See* MINES.

LEGAL COSTS, 101, 104, 106, 120, 266, 305, 307

LEGAL SECRETARY,
expenses of, 155

LEVEL, 55, 267, 316

LIBRARIES,
exemption, 397

LICENCE DUTIES, INCREASE OF, 71

LICENCE INSURANCE PREMIUMS, 101, 104, 108, 307

LIFE INSURANCE PREMIUMS, 313, 314, 317, 321, 334, 343
accident policies, 345
endowment policies, 343, 345
only when resident in United Kingdom (with exceptions), 321, 336
single premium policies, 345
Super Tax, 407
war, 344

LIMESTONE QUARRY, 55, 287

LIMITED COMPANIES, 309
conversion to, 49, 69, 70, 341
not entitled to exemption or abatement, 333

LITERARY INSTITUTIONS,
exemption of, 397

LOANS CHARGED ON SPECIFIC UNDERTAKINGS. *See* MUNICIPAL.

LOANS,
bonus on repayment of, 101
loss on, 110

LOOMS AND SPINNING MACHINERY, 176

LOOSE TOOLS, 160

LOSS,
deduction of, 81, 267

LOSSES,
setting off, 56, 59, 267, 271, 357—376

LOSS,
insured, 267, 317

LOSS OF CAPITAL, 135, 267

LOSS OF STOCK AND BUILDINGS BY FIRE, 198

LOST RENTS, 312

LUNATIC ASYLUM,
exemption of, 394, 398

MACHINERY AND PLANT, 159, 160

MACHINERY UNDER SCHEDULE A, 31. *See also* DEPRECIATION.

MAINTENANCE AND RESTORATION OF PLANT, 292

MAINTENANCE EXPENSES, 27, 28, 82, 267, 317

MANAGEMENT EXPENSES,
Financial Company, 194—196, 243, 244
of lessor of tramway, 292
savings banks, 232
trust, 204
under Schedule A, 27, 28

MANAGER'S AGREEMENT, 139
commission, 154

MANDAMUS, 329

MANUAL WORKERS, 64

MANUFACTURERS' ASSOCIATION,
accounts of, 291
deductions, 290, 291
income of, 290
subscriptions to, 291

MARINERS,
absent from United Kingdom, 229

MARKET TOLLS, 55, 270, 316
gardens, 28, 43

MARRIED WOMEN, 267—270, 320
alimony, deduction of tax from, 267, 268
distraint, 270
division of tax between husband and wife, 269
life insured premiums, 269, 320
return of income, 270, 311, 319, 320, 321, 322
separate abatements, 268
separated from husband, 267

MAYOR'S COURT FEES, 281

MEETINGS. *See* COMMISSIONERS.

METAGES,
corn and fruit, 281

METHODS OF ASSESSMENT, 15—16, 319
District Commissioners, 15, 319
number or letter, 15, 16, 319, 378
special commissioners, 15, 319

METROPOLIS, 13, 20, 24

MILITARY OFFICER, 347, 374

MILLS,
depreciation of, 172, 173
flour, 173
paper, 173

MILK SELLERS, 145

MINERALS, 38

MINES, 30, 31, 39, 47, 55, 95, 131—133, 226, 228, 270—275, 316
alum, 55
average, 55—60, 270
cessation, 55, 271
coal, 55, 270
coal dust experiments, 192, 273
coal owners' association, subscriptions to, 272
commissioners' findings of fact. *See also* FINDINGS OF FACTS.
compensation, 155, 291
conciliation board expenses, 155, 272
copper, 55, 270
cost-book, 275
dead rents, 38, 157, 273
decrease of assessment on mine decreasing in value, 271
development expenses, 272
discharge of assessment on mine failing, 271
experiments, 273
failing, 271
foreign, 226, 228, 275
iron, 55, 270
lead, 55, 270
mundic, 55, 270
partnerships, 60—61
payments to miners' permanent relief fund, 291
pit sinking, 272, 273, 275
purchase price of seams, 272
quarry not "mine" because of underground work, 287
reserves for replacement of capital, 272
returns, 61
setting-off loss on one mine against profit on another, 271, 358
shaft sinking, deduction of cost of, 272, 273
subscriptions, 272, 273
subsidence, 274
syndicate, 137
tin, 55, 270
wagons, hire-purchase of, 237
wasting assets, 272
worked-out and shut-down mines, 271

MINISTER OF RELIGION. *See* CLERGYMAN.

MINOR, 275—278, 322
contingent interest, 276
earned income of, 278

MINOR—*continued.*
exemption and abatement, 276
foreign possessions of, 276
guardian responsible, 275, 322
not personally chargeable, 296
vested interest, 276

MISSIONARY, 321

MONEY SOCIETIES, 233

MORTGAGE COMPANIES, 194, 211. *See* FINANCIAL COMPANIES.

MOTOR CARS,
depreciation of, 175

MULTIPLE SHOP COMPANIES, 86, 90—92, 99

MUNDIC MINES. *See* MINES.

MUNICIPAL, 278—284. *See also* INTEREST.
baths, 281
broker's rents, 281
cemeteries, 129, 146, 316
compensation levy deposits, interest on, 266
deduction of tax on paying interest, 283, 386
depreciation, 178—187, 280
electricity, 183
gas undertaking, 182, 184
light railways, 178—187
tramways, 169, 177, 178—182
water undertakings, 182, 183
dock dues, 284
fish and meat markets, 281
gas works. *See* GAS WORKS.
ground rent, 280
loans charged on undertakings, 278
ranking, 279
setting-off, 279, 280
sinking fund, 280, 284
market hall, 281
,, tolls, 49, 270, 281, 316
mayor's court fees, 281
metages, corn and fruit, 281
municipal buildings, loans in connexion with erection of, 283
offices, 354
paving, deduction of tax from interest received from frontage owners, 283
renewal of works, 288
retention of tax, 278, 284
setting-off losses on undertakings against profits on other undertakings, 279, 281
sewers, 190, 294, 295
sinking fund, 280, 284
slaughter houses, 295
tramways. *See* TRAMWAYS.
vaults, 281
waterworks. *See* WATERWORKS.

MUTUAL CONCERNS,
clubs, 149
co-operative stores, 155
insurance companies, 252—255
golf clubs, non-members' fees, 150

NATIONAL HEALTH AND INSURANCE CONTRIBUTIONS, 284
" " " " FUNDS, 399

NAVAL OFFICERS, 347, 374

NAVIGATIONS,
Inland, 55, 284

NEGOTIATION FEES, 285

NEW BUSINESS, 47—53, 65, 76, 303, 304, 316, 357, 367, 371, 403
under 1890 Act, 367

NITRATE,
deposits, 131

NOTICES OF CHARGE, 323, 324
" " SUPER TAX, 409
where delivered, 323

"NUMBER OR LETTER" ASSESSMENTS, 15, 319, 378

NURSERIES, 43

OATH,
verification of accounts on, 325
of secrecy of officials, 9

OBSOLESCENCE ALLOWANCES, 166—167

OFFICIAL INSTRUCTIONS, 315—322

OFFICIALS, 1

OIL WELLS, 208

OMISSIONS, 43

OMNIBUS COMPANY, 78

OPTIONS, 285

OVERDRAFT,
bank, 140, 141, 259—261

PAPER PROFITS, 138, 285

PARISHES, 17
detached, 17

PARK,
exemption of, 398

PARLIAMENTARY EXPENSES, 145, 286

PARTNERSHIP, 60—61, 320, 334—336. *See* SPECIFIC CAUSE.
admission of partner, 50, 66
conversion to limited liability, 49, 50, 69, 70, 341
death, 50, 66, 67
dissolution, 50, 66, 336, 403
drawings and salaries, 69, 74, 191, 305, 306, 317, 341
earned income of, 341
employee, admission of, 74
contingent interest of, 191
exemption and abatements, 334
in firm abroad, 210, 211
insurance, 346
limited partners, 341
retirement of partner, 72
returns, 61, 320
sleeping partners, 210, 211, 341
Super Tax, 335, 409

PATENT RIGHTS, 264, 287, 311, 317, 321

PAVING,
deduction of tax from interest received from owners of frontages, 283

PAYMENT, 377—378, 410
in shares, 137, 138, 285

PENALTIES, 301, 391, 400

PENSIONS, 287, 291, 292, 340
contributions by employees, 291

PERPETUITY,
payments for, 146

PERSONS CHARGEABLE, 60, 315

PIT SINKING, 272, 273

PLACE WHERE ASSESSABLE, 214

PLANT, 172

POLICEMAN, 398

POOR RATE NOT BINDING ON SCHEDULE A, 21

POSSESSIONS,
foreign and colonial, definition of, 210. *See* FOREIGN.

POST OFFICE,
interest paid by, 188

POWER SUPPLY, 287

PRECEPT FOR ACCOUNTS, 303
to valuer, 26

PRELIMINARY EXPENSES, 99, 101, 287

PREMIUMS FOR LEASES, 108—110

PRESENTATION,
duties and fees on, 403

PRINTING WORKS,
depreciation of, 173, 176
type, 173

PRIVATE ACT, 402

PROBATE,
bank interest extracted from affidavit, 265

PROCEDURE IN ASSESSMENT, 323

PROCURATIONS AND SYNDOLS, 403

PROFESSIONAL REPRESENTATION, 329

PROFESSIONS, 61
basis of accounts, 304

" PROFITS,"
definition of, 30, 83, 87—90, 111, 115—118, 133, 141, 221, 249
chargeable, 45
not chargeable, 45

PROHIBITION, 214

PROPERTY TAX, 18

PROVIDENT FUNDS, 348, 353

PROVISION COMPANY, 225

PUBLIC HOUSES, 18, 19, 23, 303. *See also* ANNUAL VALUE.

PUBLIC OFFICES, 347, 350
expenses of, 350

PUBLIC SCHOOL, exemption of, 392, 396

PURCHASE PRICE. *See* MINES.

QUARRIES, 55, 146, 287, 316
not " mine " because of underground work, 287

QUARTERLY ASSESSMENT, 64

QUINQUENNIAL, 20

QUORUM OF COMMISSIONERS, 17

RACK RENT, 19

RAILWAYS, 47, 55
abroad, 206
assessment of, 288
compensation, 87
depreciation, 168, 178—182
discontinue steamships, 75
improvement of line, 137
payment of tax, 377
renewals and repairs, 168
Schedule A, 32
wagons, 237

RATE IN THE £, 338, 339, 380—390
deduction of tax on alteration of, 339, 380—390
increase in, 339
in relation to 1890 Act, 366

RATES, 29, 404

RAW MATERIAL, 131

REALISATION OF INVESTMENTS, 45, 130, 138, 145, 197, 249, 334. *See also* INVESTMENTS.
insurance companies, 249
not included in return, 313
pictures and jewels, 144
securities, 138

RECOVERY OF TAX. *See* COLLECTION.

RECOVERY OF TRADE DEBTS,
cost of, 266

RECREATION GROUND,
exemption of, 398

REDEMPTION OF LEASE, 140

RE-ERECTION OF PLANT, 288

REMOVAL EXPENSES, 288

REMITTANCES, 201, 202

RENEWAL OF DEBENTURES, 158, 194

RENEWALS, 160, 168, 173, 288

RENT,
deduction for, 82, 95, 96, 148, 201—204, 305—307, 309, 317, 334, 349. *See also* ANNUAL VALUE.

RENT FREE RESIDENCE, 334

REPAIRS,
deduction of, 19, 27, 28, 32, 33, 81, 95, 101, 103, 106, 107, 111, 160, 166, 244, 288, 307, 317. *See also* SCHEDULE A.

REPAYMENT, 67, 201, 333, 402—404
abatements, 64, 402
borrowed money, 237
case stated, 330
charity property, 403
discontinued concern, 53—55
exemption of unregistered friendly societies, 233, 334
interest paid to bankers, 260
limited to three preceding years, 333, 402
new concerns, 50—53
retrospection, 404
schedules A, B, D, and E, 403
short loans interest, 258
tax on dividends, 333, 402
under 1890 Act, 360
voids, 403
weekly wage-earners, 64

REPRESENTATION,
professional, 329

RESERVES, 288, 299, 307
bad and doubtful debts, 100
wasting assets, 272

RESIDENCE. *See* FOREIGN.

RESTORATION AND MAINTENANCE OF PLANT, 137, 235, 292

RETAIL TRADERS' ACCOUNTS, 304, 307

RETENTION OF TAX, 249, 278, 284

RETIREMENT OF PARTNER, 72

RETIRING ANNUITY, 265
gratuity, 289

RETROSPECTION, 404

RETURNS OF AMOUNT OF INCOME, 201, 217, 297—322, 391, 400
amendment of, 400
preparation of, 297—322
weekly wage-earners, 64

RETURNS OF RENT, 23, 311

RIGHTS OF MARKETS AND FAIRS, 55

ROYALTIES AND MANORS,
Schedule A, 37

ROYALTIES,
deduction of, 289, 311, 317, 321. *See also* PATENT RIGHTS.
minimum, 157
recoupment of surplus, 157

RUBBER COMPANIES, 144, 145

SAILORS, 229

SALE OF BUSINESS, 408

SALES OF LANDS AND PREMISES, 143, 144

SALES OF SECURITIES, 197

SALT SPRINGS OR WORKS, 55, 316

SAVINGS BANK, 232
dividends, 63
exemption, 232, 399

SCHEDULE A,
additional assessments, 21, 22
appeal, 23, 24, 329
assessment of, 18—39, 316
assistant overseers to produce rate books, 22
to attend commissioners, 22
averages, 37
beneficial occupation, 32, 33, 92, 312
charities, 392—399
church dues, 37
co-operative societies not exempt, 156
cottage property, 36
dead rent, 38
deduction of net. *See* ANNUAL VALUE.
deduction of tax, 31, 32, 33—36, 387. *See also* DEDUCTION OF TAX.
beneficial occupation, 33
compensation levy, 34
contracting-out illegal, 36
from next payment of rent, 34
receiver, 35
Scotland, 36
sublets, 34
deductions, 27—29
drainage rate, 28
embanking rate, 28
fencing rate, 28
flood, 29
Land Tax, 28
rates, 29
repairs, 19, 27, 28, 32, 33, 403
Scotland, 29
sea walls and embankments, 28
tithe rent charge, 28
exemptions, 392—399
fines, 37, 38
fishings, 29, 31
Government property, 31
insurance, 28
lakes, 31.
landlord may elect to be assessed, 32

SCHEDULE A—*continued.*
licensed premises, 19
lost rent, 36, 312
machinery, 31
maintenance, 28
management, 28
manors and royalties, 30, 37
market gardens, 28
Metropolis, 13, 20, 24
minerals, 38
occupier assessed, 31
persons assessed, 31, 32
poor rate not binding, 21
public houses, 18, 19, 23. *See also* ANNUAL VALUE.
quinquennial, 20, 23
rack rent, 18, 19, 31
railway property, 31, 32
repairs. *See* REPAIRS.
repayment, 357
return, 23, 311, 312
royal palaces, 31
sewers, 31
shootings, 29, 30, 31
slaughter houses, 31
sporting rights, 29, 30, 31
sweeping clause, 38
Teinds, 37
tenement property, 32, 36
tied rent, 19
tithe rent charge, 28, 30, 321
tithes, 37, 321
valuation, 23—27, 329, 331
precept to valuer, 26
voids, 36, 312, 378
woodlands, 31

SCHEDULE B, 39—44, 311, 312
additional assessments, 43
annual value, 94
cattle dealers, 145
deer shooting, 44
earned income, 43, 340
excessive assessment, 41—43
farmers, 39, 40—43, 193, 311, 320
accounts, 41—43, 370
adjustment, 39, 40, 41—43, 359—368, 370
labourers' cottages, 40
losses, 41, 359, 408
golf clubs, 149
hop grounds, 241
Ireland, 40
market gardens, 43

SCHEDULE B—*continued.*
milk sellers, 145
nurseries, 43
repayment, 403
setting-off losses, 360
sporting rights, 44
tithe, no deduction for, 40
woodlands and lakes, 44

SCHEDULE C, 63, 188, 189, 355, 356, 386, 399

SCHEDULE D, 45—296
colonial profits, 46, 199—231, 315, 316
deductible expenses, 45, 79—296
foreign profits, 46, 199—231, 315, 316
profits chargeable, 45
not chargeable, 45
profits realisation of property or shares, 45
speculations, 45
speculative builder, 45
repayment, 357

SCHEDULE E, 316, 320, 347—354. *See also* CLERGYMEN.
basis of assessment, 348
college bursar, 351
deductions, 83, 349—351
directors' fees, 69, 70, 73, 307, 312, 341
engine drivers, 351
perquisites, 348
provident funds, 348, 353
repayment, 403
return, 312, 320
rules may be applied to weekly wage earners, 65
schoolmaster, domestic assistance, 350
secrecy of, 9
thrift scheme, 348, 354

SCHOOLMASTERS, 353

SCHOOLS,
exemption of, 398

SCOTLAND,
deductions under Schedule A, 29

SEA WALLS AND EMBANKMENTS, 28

SECRECY BY OFFICIALS, 9

SECURITIES,
public revenue, 63, 201, 202, 355
depreciation of, 172
sales of, 197
war, 356

SEPARATION OF HUSBAND AND WIFE, 267

SETTING-OFF LOSSES, 271, 281, 308, 357—376, 408

SEWERS, 39, 190, 289, 294

SEWING MACHINES,
depreciation of, 177

SHAFT SINKING, 272, 273

SHARES,
issued to shareholders, 343
payment in, 124, 282
underwritten, 293

SHIPPING COMPANY, 222

SHIP REPAIRING AND BUILDING MACHINERY, 177

SHIPS, 50, 61, 75, 77
depreciation, 170—172
discontinuance, 75
succession, 77

SHOOTINGS, 29, 44

SHOPKEEPERS,
accounts of, 304, 306

SHORT LOANS, 140, 245, 256, 257, 259, 261. *See also* INTEREST.

SINKING FUND TO PAY OFF ANNUITY, 263

" " " " DEBENTURES, 258, 259

" " " " DEBTS, 283

SLATE QUARRY, 55, 287

SLAUGHTER-HOUSE, 31, 295

SOLICITORS,
accounts may be on cash basis, 304
may represent appellants, 329

SPECIFIC CAUSE, 49, 50, 65—78
colliery company, 73
conversion, 73. *See* PARTNERSHIP
death of partner, 73
depression in trade, 75
deprivation of profits, 67
directors' fees, 69, 70, 73, 342
interest on bank overdraft, 72
retirement of partner, 72
succession by widow, 72

SPECULATION,
lands and securities, 45, 138
shares, 138

SPECULATIVE,
builder, 45

SPORTING RIGHTS, 29, 44

STATEMENTS OR SCHEDULES, 298, 310, 315—322. *See also* RETURN.

STATUTORY INCOME, 315, 334

STOCK, 304—306, 310
removal of, 288

STOLEN GOODS,
receiving, 62

STONE QUARRY, 55, 287

STREAMS OF WATER, 55, 316

STUD FARMS, 162

SUBJECTS OF ASSESSMENT, 92—296

SUBLETS, 34

SUBSCRIPTIONS, 290, 291
hospital, 147

SUBSIDENCE, 274

SUBSIDIARY COMPANIES, 88, 106

SUCCESSION, 50, 65—79, 163, 361

SUPERANNUATION,
asylum officers, 348
earned rate, 341
funds, 291
retiring annuity, 265
„ gratuity, 289

SUPER TAX, 405—412
additional assessments, 406
annuity, 409
death during year, 406
distraint, 270
division between husband and wife, 269
example, 410—412
farming losses, 408
married women, 269, 270
partnership profits, 334
regulations, 409, 410
sale of business, 408
shares issued to shareholders, 343
under control of special commissioners, 406
war provisions, 412
widow's annuity, 409

SURCHARGES, 391

SURVEYOR OF TAXES, 1, 2
analogous to counsel for prosecution, 16
appointment and work, 12
assessor for Metropolis, 14
Schedule A in certain years, 13
weekly wage earners, 65
may demand case to be stated for opinion of High Court, 2, 80
not "local" individuals, 300
oath of secrecy, 9
presence at appeal meetings, 327
receives returns for Special Assessment, 319
supplies forms, 316, 319, 333

SWEEPING CLAUSE SCHEDULE A, 38
" " " " D, 46, 63

SWEEPING WORDS,
interpretation of, 270

SYNDICATE, 137

SYNODALS AND PROCURATIONS, 403

TAXPAYER,
analogous to Counsel for defence, 16

TAXED INCOME, 316

TEINDS, 37

TEMPORARY ADVANCES, 205

TENEMENT PROPERTY, 32

TENTHS, 403

THEFT, 292

THRIFT SCHEME, 354

TIED HOUSES. *See* BREWING.

TIME LIMIT FOR CLAIMS, 41, 51, 53, 67, 202, 333, 360, 402
depreciation, 161

TIN MINES. *See* MINES.

TITHE RENT CHARGE, 28, 30, 321
cost of collection, 404

TITHES, 37, 321
cost of collection, 404

TOLLS, 55, 270, 281, 293, 316

TOOLS,
loose, 160

TRADE SUBSCRIPTIONS, 85, 86, 290, 291

TRADE UNIONS, 232
exemptions, 232, 399

TRADING,
what constitutes, 224, 236, 296. *See also* FOREIGN.

TRAMWAY, 55, 78, 292
depreciation, 169, 177, 178, 292
management expenses of lessor, 292

TRAVELLING EXPENSES, 293, 350, 351

TREBLE DUTY, 400

TREASURY,
bills, 293
may grant additional remuneration to clerks to commissioners, 10, 11

TRUST,
abroad, 196, 202, 204, 212
estate, 341
management expenses, 204

TWO UNDERTAKINGS, 50

TYPE, 173, 176

TYPISTS, NOT ASSESSED QUARTERLY, 64

UNDERWRITERS, 293

UNEARNED RATES, 308, 310—322, 337—343
after setting-off losses, 358, 361, 363, 368

UNEXECUTED CONTRACTS, 134

UNEXPIRED RISKS, 247, 250

UNIVERSITY,
exemption of, 392, 395

UNREALISED SHARES, 285

UNREGISTERED FRIENDLY SOCIETIES,
exemption of, 233, 334

UTENSILS OF TRADE,
supply or repair of, 81, 317

VALUATION OF PREMISES BY PERSON OF SKILL, 23--27, 329, 331

VAULTS, 281

VERIFICATION OF ACCOUNTS, ETC.,
on oath, 325

VESTED INTEREST OF MINOR, 276

VICTUALLER. *See also* ANNUAL VALUE AND BREWING.

VOCATIONS, 61

VOIDS, 36, 312, 378

VOLUNTARY ALLOWANCES, 99, 236, 334

WAR,
- loans, 100
- losses, 357, 371—376
- reduced profits or income, 357, 371—376
- securities, 356
- super tax, 412

WASTING ASSETS, 82, 90, 130, 131—134, 162

WATERWORKS, 47, 55, 59, 95, 281—283, 294—296, 316
- depreciation, 182, 183
- mutual principle, 149
- setting-off losses, 59, 281, 282, 358

WAYLEAVES, 55

WEAR AND TEAR. *See* DEPRECIATION.

WEEKLY WAGE EARNERS, 64—65
- appeal, 65
- assessment, 64
- collector, 65
- recovery, 65
- regulations, 65
- returns, 64
- surveyor to assess, 65
- total income, 64

WHERE ASSESSABLE, 214

WHISKY DISTILLERS, 76

"WHOLLY AND EXCLUSIVELY," 80, 81, 82—92, 103, 105, 117, 142, 147, 290, 317, 349, 351

WIDOW'S ANNUITY, 409

WINE MERCHANTS, 223

WOODLANDS, 31, 44

WOOL-BROKING BUSINESS, 196

WORKHOUSE,
- exemption of, 398

WORKING MEN'S CLUBS, 233

WORKMEN'S COMPENSATION, 155

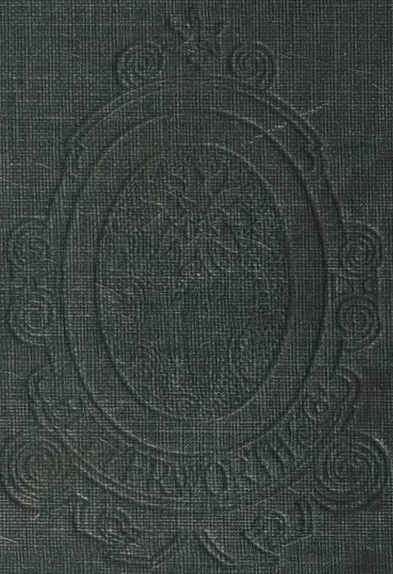
WORSTED SPINNERS, 287

WRONGFUL DISMISSAL, 139

YACHT,
residence on, 227

YARN, 228

YEAR,
tax, 47, 313, 318

PRINTED BY WILLIAM CLOWES AND SONS, LIMITED, LONDON AND BECCLES.

MIDDLE TEMPLE